Supreme Court, U.S.
FILED

10-52 APR 12 2010

IN THE OFFICE OF THE CLERK

Supreme Court of the United States

PRUDENTIAL EQUITY GROUP, LLC.,

Respondent,

v.

ARLENE D. ROWLAND,

Petitioner.

Petition For A Writ Of Certiorari To The United States Court of Appeals For The Ninth Circuit

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Arlene D. Rowland, Defendant-Petitioner *Pro Se*
P.O. Box 7591
Ventura, CA 93006
(no telephone)

June 27, 2010

QUESTIONS PRESENTED

1. The district court, denied Defendant Rowland's demand for a jury trial on the issue of whether an agreement in writing for arbitration with Prudential Equity Group was made within the meaning of the Federal Arbitration Act (9 U.S.C. § 4), also guaranteed by the Seventh Amendment of the United States Constitution and the Arizona State Constitution. No admissible evidence was filed by any defendant with personal knowledge of the facts in dispute. Rowland also disputed the Plaintiff's claim of diversity jurisdiction because the parties were citizens of the same state and the $75,000 minimum amount in controversy could not be satisfied for diversity jurisdiction purposes where no agreement between the parties to arbitrate existed, and no arbitration had been conducted. She contended that the non-party Plaintiff lacked standing to enforce any purported arbitration "award" after the panel arbitrators dismissed without prejudice her Statement of Claim of employment discrimination contracted for arbitration with another defunct firm. Rowland also disputed the authenticity of the uncertified papers purported to be an "award" of an arbitration never conducted, and she contended that this case's Plaintiff was barred by the statute of limitations because the constructive date of filing determined by the court filed date of the federal waiver of service exceeded one year of the date of the award of attorney fees.

Did it violate Rowland's right to a jury trial, and her constitutional right of due process and uniform

application of the law under the Fifth and Fourteenth Amendments when the judge, rather than a jury, decided the disputed and contradictory material facts of her citizenship, domicile, and residence; adopted defendant's counsels' self-serving opinions, unsupported by admissible evidence, and then presumed her domicile continued to be in Maricopa County, Arizona in April 2007, based on an inadmissible arbitration Statement of Claim that she filed for arbitration with another firm in February 2003 ?

2. Did the district court deny Rowland, a former Arizona resident and employee, equal protection of its statutes and constitution causing unfair legal prejudice by waiving for Prudential Equity Group, via a *post-appeal* "clerical correction" of the defunct Plaintiff's name substituting another defunct firm, an otherwise statutory bar precluding an unregistered foreign corporation from initiating a claim in an Arizona court against a California resident?

3. The Plaintiff had an attorney unauthorized to practice law in Arizona file the *unsigned* required Notice of Application to Confirm in Arizona District Court, misrepresenting on the April 2007 opening documents that counsel had already been admitted *pro hac vice* (yet filed and paid for its *pro hac vice* application weeks later), and then further misrepresented to the court that the application was timely when the filing of Rowland's federal waiver of service determines the "filing" date under the Federal

Rules of Civil Procedure. The Plaintiff never filed *their* written agreement to arbitrate, a statutory prerequisite to applying to the court to confirm an arbitration award, because none existed. The Plaintiff failed to disclose to the district court that it was a limited liability corporation (for purposes of diversity jurisdiction analysis) until after the court confirmed the "award." The Plaintiff failed to update its status with the court when the State of Arizona revoked its foreign *corporation* status in 2007; and then failed to alert the court in 2008 that it had gone out of business, yet attorneys filed appellate motions and a brief withholding the information that the claim was moot because the Plaintiff no longer existed and there never was any live controversy between the Plaintiff and Defendant of this case. Did the district court deny Rowland her constitutional right of Due Process (procedural and substantive) by confirming by default simply stating prior to Prudential's application she failed to move to vacate the "award" (of a non-party of the NASD Uniform Submission Agreement), when the Plaintiff failed to met the statutory requirements of the Federal Arbitration Act that minimally requires a party to the arbitration to file the agreement to arbitrate, within a year of an arbitration award determined on the merits of the controversy ?

PARTIES TO THE PROCEEDING

Petitioner, Arlene D. Rowland, employed as a registered Financial Advisor at Prudential Securities, Inc. from April 1996 until Prudential Financial, Inc. transferred her to its new joint venture, Wachovia Securities in July 2003, was the defendant in the district court and appellant in the court of appeals.

Respondent Prudential Equity Group, LLC was the corporate plaintiff alleging diversity jurisdiction and filed an application in Arizona District Court to confirm an arbitration "award" of a National Association of Securities Dealers, NASD Dispute Resolution, Inc. arbitration that was dismissed without prejudice by the arbitrators on April 21, 2006.

Prudential Equity Group, LLC, a non-party to the dismissed arbitration, is now a defunct limited liability corporation, and lacked "foreign corporation" status with the State of Arizona in 2007 when it filed the application to confirm the "award" of another defunct business entity: Prudential Securities, Inc. On March 25, 2008 the Arizona District Court issued an order that confirmed the award for the benefit of yet another firm: Prudential Equity Group, Inc., who at the time of filing and also at the time of confirmation was also a defunct business entity.

National Association of Securities Dealer, NASD Dispute Resolution, Inc., now known as "FINRA," conducted the arbitration pre-hearing sessions, then granted Petitioner's motion to dismiss without prejudice her employment discrimination claim that she filed for arbitration.

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IV. No agreement exists between Prudential Equity Group and Rowland that "a judgment of the court shall be entered upon the award made pursuant to the arbitration" under Section 9 of the FAA, so the court should not have confirmed an "award" upon the application of a non-party who failed to file the agreement required by Section 13(a). . . 13

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A. The district court was required to "make an order referring the issue to a jury " when Rowland "demande[ed] a jury trial of the issue" to find that no agreement in writing for arbitration was made. 9 U.S.C. § 4 . . . 17

B. The Circuits have refused to order arbitration where one party claims that it is not bound by the arbitration agreement. . 18

C. The Federal Arbitration Act provisions are mandatory, not optional, conditions precedent for compelling arbitration or confirming an award, and the literal reading controls. 9 U.S.C. § 13(a). Prudential did not fulfill the threshold requirements, so the district court should have dismissed the application to confirm an "award" as barred by the terms of the statute. § 2 . 19

VI. Non-Party Prudential Equity Group lacked standing to apply under 9 U.S.C. § 13(a) for confirmation of an alleged arbitration "award" of attorney fees issued to a different firm when the arbitration was dismissed

without prejudice. 9 U.S.C. § 13(a) . . 21

VII. Circuits hold that arbitrators exceed their authority and will not enforce awards issued, nor vacate awards issued, to a non-party of the arbitration. . 23

VIII. Prudential Equity Group and Rowland never had any agreement at all, and the district court failed to apply state law to decide at the outset whether an agreement was reached. 27

IX. CONCLUSION - The requirements set forth in the Federal Arbitration Act are not to be looked upon as mere technicalities to be accepted with cold reserve and embraced casually. They are to be taken seriously as a means of carrying out an important public policy, otherwise the public's faith in resolving disputes submitted to arbitration will be gravely undermined. 31

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CITATIONS OF THE OFFICIAL AND UNOFFICIAL REPORTS OF THE OPINIONS AND ORDERS ENTERED IN THE CASE BY COURTS OR ADMINISTRATIVE AGENCIES

Prudential Equity Group, LLC v. Rowland, 362 Fed.Appx. 591 (9th Cir.(Ariz.) Jan 11, 2010) (Not Selected for publication in the Federal Reporter, NO. 08-15972), Slip Copy, 2010 WL 76432, C.A.9 (Ariz.), January 11, 2010. Affirmed district court. . .

Prudential Equity Group, Inc. v. Rowland, D.Ariz., March 25, 2008 (NO. CV07-00801-PHX-EHC). Not Reported in F.Supp.2d, 2008 WL 824001. Confirmed.

Notice of Appeal filed April 11 2008 . . .

Order denying reconsideration May 16, 2008 . .

Confirmation Order March 25, 2008 (D.Dkt.) .
National Association of Securities Dealers, NASD Dispute Resolution, Inc. Arbitration Case No. 03-00179 Statement of Claim Rowland v. Prudential Securities, Inc. filed: February 2003 . . .

Uniform Submission Agreement to Arbitrate EEOC Charge #350A300777 of December 27, 2002 against employer Prudential Securities, Inc. signed February 6, 2003 . . . . .

NASD granted Plaintiff's motion for dismissal without prejudice for consolidation with court claims June 2005; NASD "Award" issued April 21, 2006 .

STATEMENT OF BASIS FOR JURISDICTION

On **March 30, 2010**, the Ninth Circuit Court of Appeals denied Appellant Rowland's petition for rehearing and petition for rehearing en bank. (Ap.Dkt. 38). Rowland is filing this petition for writ of certiorari within ninety days by sending it to the Clerk through the U.S. Postal Service, postage prepaid, bearing a postmark, showing that the petition was mailed on or before the last day for filing. **Sup.Ct. Rule 29.2; 28 U.S.C. § 1254.** *See* Appendix

The Ninth Circuit Court of Appeals "Memorandum" disposition Case No. 08-15972 (*Prudential Equity Group, LLC, Appellee v. Arlene Rowland, Appellant*) was filed by the clerk on **January 11, 2010**, affirming Arizona District Court's confirmations of the arbitration "award" of attorney fees and costs from a dismissed without prejudice arbitration of Rowland's December 2002 EEOC Charge of employment discrimination, harassment, and retaliation. (Ap.Dkt. 33) *See* Appendix

On February 1, 2010, the Ninth Circuit Court of Appeals granted Rowland an extension of time until February 24, 2010 to file a petition for panel rehearing and petition for rehearing en banc. (Ap.Dkt. 35) *See* Appendix

On February 10, 2010, Rowland timely filed a petition for rehearing. (Ap.Dkt.37)

On **March 30, 2010**, the Ninth Circuit denied Rowland's petition for rehearing and petition for rehearing en bank. (Ap.Dkt. 38) *See* Appendix The Ninth Circuit Mandate issued on April 12, 2010. (Ap.Dkt. 40). *See* Appendix On May 12, 2010, Rowland filed a motion to

recall the mandate pending petition for certiorari to the United States Supreme Court. (Ap.Dkt. 41)

The Federal Arbitration Act (9 U.S.C. § 16(a)(1)(D)) authorizes an appeal from an order confirming or denying confirmation of an award. Cases in the courts of appeals may be reviewed by the Supreme Court by writ of certiorari granted upon the petition of any party to any civil case after rendition of judgment or decree. 28 U.S.C. § 1254.

The Supreme Court may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review; 28 U.S.C. § 2106. A civil proceeding notice of appeal must be filed within thirty days after the entry of the judgment or order; 28 U.S.C. § 2107(a). Any appeal or writ of certiorari intended to bring any judgment or decree in a civil action before the Supreme Court for review shall be applied for within ninety days after the entry of such judgment or decree; 28 U.S.C. § 2101(c). **Supreme Court Rule 13.3** states that if a petition for rehearing is timely filed in the lower court, or if the lower court appropriately entertains an untimely petition for rehearing, the time to file the petition for a writ of certiorari runs from the date of the denial of rehearing.

Arlene Rowland, Appellant-Defendant Pro Se, petitions the Supreme Court to vacate, set aside or reverse the Ninth Circuit Court of Appeals affirmation of the United States District Court, District of Arizona's **March 28, 2008** confirmation order of an arbitration "award" of **$137,795.82** in favor of Prudential Equity Group, Inc., under the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1 *et seq.*; claim under Title VII of the Civil Rights Act of

1964, 42 U.S.C.§ 2000e. (D.Dkt. 28). 28 U.S.C. § 1291.

Arlene Rowland further petitions the Supreme Court to vacate, set aside, or reverse the Ninth Circuit Court of Appeals affirmation of the United States District Court, District of Arizona's April 25, 2008 *post-appeal* order (D.Dkt. 39) *sua sponte* changing the name of the party Plaintiff to "Prudential Equity Group, LLC" *also* entitling it to an alleged arbitration "award" of $137,795.82, and the December 8, 2008 Arizona District Court's *post-appeal* entry of judgment of **$137,795.82, plus interest from April 21, 2006** in favor of Prudential Equity Group, LLC., under the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1 *et seq.*; claim under Title VII of the Civil Rights Act of 1964, 42 U.S.C.§ 2000e. (D.Dkt. 72). 28 U.S.C. § 1291.

CONSTITUTIONAL PROVISIONS STATUTES and RULES

U.S. Constitution - 7th Amendment - Jury Trial
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Arizona State Constitution - Jury Trial. . .

9 U.S.C. §§ 1 *et seq.* Federal Arbitration Act .

28 U.S.C. § 1291 . . . . .
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28 U.S.C. § 1332 . . . . .
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28 U.S.C. § 2101(c) . . . . .
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U.S. Supreme Court Rule 13.3 . . .
U.S. Supreme Court Rule 29.2 . . .

Federal Rules of Civil Procedure Rule 4(d)(4) .
Federal Rules of Civil Procedure Rule 12(b) .
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Federal Rules of Civil Procedure Rule 60(b) .
Federal Rules of Civil Procedure Rule 71(a) .

Other Authorities

NASD Dispute Resolution, Inc. Rules of Arbitration (pre-2007):

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NASD Rule 10210 Series - Statutory Discrimination

NASD Rule 10217 . . . . .
NASD Rule 10301(a) . . . . .
NASD Rule 10305 . . . . .
NASD Rule 10331 . . . . .
NASD Rule 10332 . . . . .
NASD Rule 10214 . . . . .
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CONCISE STATEMENT OF THE CASE

The Ninth Circuit Court of Appeals has decided an important federal question in a way that conflicts with the clear statutory language of the Federal Arbitration Act and conflicts with the previous decisions of the United States Supreme Court, and the United States court of appeals that have interpreted Section 9 of the Act. The decision also conflicts with the same United States District Court, District of Arizona, decision that previously found that a non-party to the arbitration contract had no standing to enforce, nor vacate an arbitration award. Supreme Court review is thereby necessary to secure and maintain uniformity of the decisions, and to avoid undermining the public's trust in arbitration as an alternate method of resolving disputes.

A random person should not be able to print out uncertified papers from the internet, and without any legal standing whatsoever, file a court application for summary proceedings to confirm an alleged arbitration "award" of attorney's fees without ever showing up in court. Outside counsel of a defunct firm should not be able to initiate litigation purporting to represent a non-existing firm and paper to death a contrived defendant until a deadline is missed, perhaps enabling the entry of a default judgment.

This is a petition to vacate *each* of the Arizona District Court confirmations of $137,795.82 (plus interest) "awards" of attorney fees and costs to non-parties of the NASD Dispute Resolution, Inc. 2003 Uniform Submission Agreement to arbitrate Rowland's December 2002 EEOC Charge of discrimination, sexual

harassment, and retaliation that she filed against her former employer, Prudential Securities, Inc., in February 2003.

Petitioner Rowland further alleges that the United States District Court, District of Arizona did not have subject matter jurisdiction, nor personal jurisdiction over her in April 2007, and that Prudential Equity Group had no federal court standing to enforce another firm's cancelled arbitration agreement; and was legally incompetent to initiate any legal action in the State of Arizona. Prudential alleged diversity jurisdiction to confirm the "award" based on their faulty claim of the parties' diverse citizenship, yet failed to prove that the firm did not have members residing in California when Rowland (a permanent California resident since September 2006) challenged Prudential's misrepresentation that she was domiciled in Maricopa County, Arizona, and that the parties were not diverse, when Rowland discovered and reported that Prudential Equity Group, LLC, a limited liability corporation, had members living in California.

Moreover, the $75,000 jurisdictional minimum amount in controversy for federal court diversity jurisdiction was not satisfied, because Rowland never had a relationship with either firm, and there never was any underlying arbitration contract, nor any controversy between her and those firms that could have possibly resulted in any legal or financial obligation. Legally there could be no "award" of attorney fees to a *non-party* firm for the defense expenses of an entirely different firm on an employee's claim of statutory discrimination, sexual harassment, and retaliation. The arbitration was cancelled, so once the $137,795.82 is subtracted from the

"award" the balance is zero - - $75,000 short of the minimum qualifying amount for diversity jurisdiction.

Finally, Petitioner contends that because Prudential Equity Group, LLC wound down its business in 2007 and is no longer registered as a broker-dealer, it has no personal stake in the outcome of the case. The case was moot on appeal because no live controversy remained at the time the court of appeals heard the case. ***GTE Cal., Inc. v. FCC,*** 39 F.3d 940, 945 (9th Cir.1994). "To qualify as a case fit for federal-court adjudication, an actual controversy must be exist at all stages of review, not merely at the time the complaint is filed." "A claim is moot when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome. The basic question is whether there exists a present controversy as to which effective relief can be granted." ***Council of Ins. Agents & Brokers v. Molasky-Arman***, 522 F.3d 925, 933 (9th Cir.2008). There is no argument for abandoning precedent here.

I. Statement of Case Procedural History and Summary of Facts.

Petitioner-Appellant-Defendant, Arlene Rowland, timely appealed the March 2008 Arizona District Court's order confirming an alleged "award" of $137,795.82 for attorney fees of an arbitration that was dismissed by the arbitrators without prejudice.

In December 2002 Rowland, a licensed Financial Advisor, filed an EEOC Charge of discrimination, sexual harassment and retaliation against her employer, Prudential Securities, Inc. ("PSI") a registered National Association of Securities Dealers ("NASD") broker-

dealer. Since 1999, her employer's pre-dispute arbitration clause (employment U-4) precluded mandatory arbitration of employee claims of statutory discrimination.

> In 1999, the SEC approved amendments to the NASD rules that created a new **Rule 10210 Series**, that "apply only to disputes that include a claim alleging employment discrimination, including sexual harassment claim" and "shall supersede any inconsistent Rules contained in this Code" Exchange Act Rel. No. 42061 (Oct. 27, 1999) File No. SR-NASD-99-08), **64 Fed.Reg. 59815** (Nov. 3, 1999). **NASD Rule 3080(2):** "A claim alleging employment discrimination, including a sexual harassment claim in violation of a statute is not required to be arbitrated under NASD rules. Such a claim may be arbitrated at the NASD only if the parties agreed to arbitrate it, either before or after the dispute arose."

Upon receiving the EEOC's right-to-sue letter, prior counsel voluntarily submitted her claims of workplace discrimination, sexual harassment, and retaliation against PSI to arbitration before the NASD on February 19, 2003, by submitting the NASD Uniform Submission Agreement **(R20-21)** [1] and NASD Statement of Claim #03-01179 **(R24-27)** filed "pursuant to the NASD Code of Arbitration Procedure, **Rule 10210** Series applicable to statutory employment discrimination claims." **(R27)**. Rowland's employer, PSI

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[1] **(RXX)** = Sequential page number of Appellant's Excerpts of Record filed with Ninth Circuit Court of Appeals Brief.

agreed to arbitrate her claim by executing a NASD Dispute Resolution Uniform Submission Agreement on June 17, 2003 (R22-23), just 11 days before it became known as Wachovia Securities, LLC. Rowland and substantially all PSI employees were then "bulk" transferred to Wachovia Securities on July 1, 2003.

Rowland was notified on May 16, 2003 that all contractual relations with PSI were transferred to the new firm Wachovia Securities, LLC (R206-208) as were her NASD professional licenses and her deferred compensation earned for exceeding firm sales targets while employed by PSI as a Financial Advisor from April 1996 to July 2003.[2]

Before any arbitration sessions had begun, Rowland exercised a provision of the NASD Code of Arbitration Procedure incorporated by reference [3] in the parties NASD Uniform Submission Agreements,

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[2] "Going forward, your contractual relationship will be with Wachovia Securities. Your contractual relationship with PSI will be terminated." (R207, ¶2) "The closing of the combination will result in an assignment of your brokerage agreement and your account with PSI to Wachovia Securities "(R207, ¶3). *Signed by* "John R. Strangfeld, Vice Chairman," Prudential Financial, Inc. (R208). *See:* U.S. Securities Exchange Act of 1934 §§ 78o(a)(1), cc(b): Contracts with unregistered broker-dealers are voidable.

[3] Agreements: "1. The undersigned parties hereby submits the present matter in controversy, as set forth in the attached statement of claim ... to arbitration in accordance with the Constitution, By-Laws, Rules, Regulations and/or Code of Arbitration Procedure of the sponsoring organization... " (R20-21 [Rowland signed], R22-23 [Prudential Securities, Inc. signed]). NASD Rule 10331: "This Code shall be deemed a part of and incorporated by reference in every agreement..."

and motioned under **NASD Rule 10305** for dismissal without prejudice of the arbitration claims, because PEG had become a defunct business entity and **NASD Rule 10301(a)** provided: "A claim involving a member in the following categories shall be ineligible for submission to arbitration under the Code unless a customer agrees in writing to arbitrate the claim after it has arisen: (1) A member whose membership is terminated, ...canceled, or revoked; (3) A member who is otherwise defunct." The NASD arbitrators conditionally granted her motion for dismissal without prejudice on June 7, 2005 **(R29-30)**. The NASD cancelled the arbitration sessions that were scheduled to begin on January 9, 2006, and issued a copy of an unconfirmed "award" on April 21, 2006 **(R32-43)**. Rowland was never provided with the secret "cost bill" **(R37 #2)**, spreadsheet, communication, nor documentation in August 2005, or any time thereafter, despite her repeated demands to PEG and the NASD.

On April 16, 2007, Prudential Equity Group ("PEG") a non-signatory to the arbitration agreement and nonparty to the cancelled arbitration applied to the Arizona District Court alleging diversity jurisdiction, to confirm an unauthenticated, uncertified, and disputed "award" of attorney fees and costs in the amount of **$137,795.82** issued to non-party PEG, LLC. PEG, LLC had not even formed until February 2, 2004 **(R201)**, and had no legal claim to any contract to arbitrate employment discrimination claims between Rowland and her former employer PSI. [4]

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[4] ***Hotel and Restaurant Employees & Bartenders Int'l Union v. Michelson's Food Serv., Inc.***, 545 F.2d 1248, 1254 (9th Cir.1976) (arbitrator's "job is to define the relief that will

Rowland, a California resident, executed and filed the federal Waiver of Service of Summons **(R47-50)** on May 21, 2007 with the Arizona District Court and timely filed a Motion for Dismissal **(R51)** contending lack of personal jurisdiction, wrong venue, lack of subject matter jurisdiction, [5] lack of diversity jurisdiction and less than $75,000 in controversy, lack of standing, and demanded a jury trial; **Fed.R.Civ.P. 12(b).** [6] She also timely filed an answer demanding a **jury trial (R95)** on the facts in dispute, raising defenses of: barred by the statute of limitations (because PEG's constructive date of application beyond one year[7] of the "award"), plaintiff

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compensate the grievant if his claim is upheld"); *Coast Trading Co. v. Pacific Molasses Co.*, 681 F.2d 1195, 1198 (9th Cir.1982) (arbitration award may be vacated "where the arbitrators exceeded their powers"); 9 U.S.C. § 10(a)(4).

[5] ***Southland Corp. v. Keating***, 465 U.S. 1, 15 (1984) ("While the Federal Arbitration Act creates federal substantive law requiring the parties to honor arbitration agreements, it does not create any independent federal-question jurisdiction....").

[6] 9 U.S.C. § 9 **of the FAA: If the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration, and shall specify the court, then at any time within one year after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title. If no court is specified in the agreement of the parties, then such application *may* be made to the United States court in and for the district within which such award was made.**

[7] 9 U.S.C. § 9, **in pertinent part: "Notice of the application shall be served upon the adverse party, and thereupon the court shall have jurisdiction of such party ... If the adverse party shall be a**

standing,[8] lack of diversity between her and the LLC, inadequate amount in controversy,[9] legal incompetency of the defunct business entity, failure to exhaust administrative remedies under Title VII to enforce an award, *etc.*

On March 25, 2008 the District Court confirmed [10] **(R145-147)**(*See* Appx.) the unauthenticated and disputed "award" of an arbitration never conducted, in yet another nonparty name: Prudential Equity Group, Inc. **(R145)**, also a defunct business entity. Rowland timely filed reconsideration motions **(R148-174; R175-215)** under **FRCP Rules 60(b), 59(e)** and Opposition to

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nonresident, then the notice of the application shall be served by the marshal of any district within which the adverse party may be found in like manner as other process of the court." **FRCP Rule 4(d)(4)** provides that if a waiver of service is filed, the action shall proceed as if actual service had been made on the date of the filing of the waiver. [May 21, 2007 (R 47)]

[8] "The general rule in federal cases is that a plaintiff must have initial standing and "continue to have a 'personal stake in the outcome' of the lawsuit." ***Spencer v. Kemna***, 523 U.S. 1, 7(1998). PEG was not a "party of the arbitration." The document captioned in the name of PEG was not a "mutual, final and definite award upon the subject matter submitted" as required by **9 U.S.C. § 10.**

[9] There was never an underlying controversy between Rowland and PEG submitted for arbitration pursuant to **28 U.S.C. § 1332**: Diversity of citizenship with more than **$75,000** in controversy.

[10] *See* ***Marine Transit Corp. v. Dreyfus***, 284 U.S. 263, 275-76 (1932) ("[w]e do not conceive it to be open to question that, where the court has authority under the statute ... to make an order for arbitration, the court also has authority to confirm the award or to set it aside for irregularity, fraud, *ultra vires* or other defect").

Court Order of April 25, 2008 (R145-147) which the court denied.

Rowland also timely appealed to the Ninth Circuit Court the confirmation of the "award" as to PEG, Inc. and denial of her timely post-confirmation motions. [11] On January 11, 2010, the Court of Appeals issued a **Memorandum** (*See* Appx.) affirming the District Court's confirmation, yet captioned as to another defunct business entity, PEG, LLC - a nonparty to the appeal who never formally motioned for a name change, substitution, or joinder during the district court proceedings, nor the appellate court proceedings. [12] Moreover, PEG, Inc. and PEG, LLC both failed to notify the courts of their defunct status when they wound up their business affairs. Rowland never had an employment relationship, nor any other kind of relationship with PEG.

Thus, Rowland contends that **no agreement of any kind** was ever reached between her and PEG, Inc., nor PEG, LLC, and neither petitioned any court to arbitrate claims with Rowland. The Appellate Court

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[11] "Court possesses inherent power to vacate its own judgment when a fraud has been perpetuated on the court, and to levy sanctions when a party, independent of its attorney, acts "in bad faith, vexatiously, wantonly, or for oppressive reasons.". ***Chambers v. NASCO, Inc.***, 501 U.S. 32, 44-46 (1991).

[12] **FRCP 19** provides for the joinder of persons necessary for a just adjudication. ***Transportation-Communication Employees Union v. Union Pacific R.R.***, 385 U.S. 157, 159 (1966) (refusing to enforce an arbitration award because an indispensable party was absent during the proceedings).

should have vacated the order confirming the award and remanded the case to the district court, concluding, *at least*, that where the very existence of any agreement to arbitrate is at issue, it is for the courts to decide based on state-law contract formation principles.

Rowland continues to contend that the District Court lacked diversity jurisdiction, subject matter jurisdiction and personal jurisdiction over the application to confirm, and that PEG, Inc. and PEG, LLC each lacked Article III standing because no controversy ever existed between Rowland and those firms - all factual inquires. [13]

II. This decision conflicts with the unambiguous statutory language of the Federal Arbitration Act, Section 9, and specifically conflicts with the recent Supreme Court decision of *Arthur Anderson LLP v. Carlisle*, 129 S.Ct. 1986 (2009).

"Principles of *stare decisis* ... demand respect for precedent whether judicial methods of interpretation change or stay the same. Were that not so, those principles would fail to achieve the legal stability that they seek and upon which the rule of law depends." ***CBOCS West, Inc. v. Humphries,*** 128 S.Ct. 1951, 1961, (2008). Once the Supreme Court has construed a statute, stability is the rule, and states: "we will not

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[13] Federal courts are always "obliged to inquire *sua sponte* whenever a doubt arises as to the existence of federal jurisdiction." ***Mt. Healthy City Board of Educ. v. Doyle***, 429 U.S. 274, 278 (1977) (allegations of residence are insufficient to establish diversity jurisdiction).

depart from [it] without some compelling justification." ***Hilton v. South Carolina Public Railways Comm'n***, 502 U.S. 197, 202 (1991). The Court has a "responsibility to assure the fidelity of its judgment to the controlling law, a responsibility imposed by the Due Process Clause of the Fifth Amendment;" ***Galloway v. United States***, 319 U.S. 372 (1943).

Specifically, this decision conflicts with the stated basis for of the recent U.S. Supreme Court ruling of ***Arthur Anderson LLP v. Carlisle***, 129 S.Ct. 1986 (2009) that held "a litigant who was not a party to the relevant arbitration agreement may invoke §3 [of the FAA], if the relevant state contract law allows him to enforce the agreement [to arbitrate a dispute]." Here, the Ninth Circuit affirmed the Arizona District Court's judgment confirming an alleged and uncertified "award" of a **non-litigant** and a **nonparty** of a statutory discrimination dispute submitted to arbitration by Rowland and her broker-dealer employer that was cancelled by the arbitrators and dismissed without prejudice. The statutory language of the Federal Arbitration Act, **9 U.S.C. § 9**, unambiguously requires "**any party** to the arbitration may apply to the court ... for an order confirming the award" "**if the parties in their agreement** have agreed that a judgment of the court shall be entered **upon the award made pursuant to the arbitration.**" Prudential Equity Group was not ever Rowland's employer, was not the subject of any dispute, and was not the firm of the 2003 NASD arbitration agreement. Missing here are the statutory preconditions that the award be "made pursuant to the arbitration" and the "**parties in their agreement have agreed that a judgment of the court shall be entered**" before "**any party to the arbitration** may apply to the

court ... for an order confirming the award." 9 U.S.C.§ § 9, 13.

III. The case is moot and requires vacatur of the confirmation and judgment since Prudential Equity Group lacked statutory "party" status and therefore lacks the necessary case and controversy "pursuant to the arbitration" required by Article III of the Constitution.

Standing, as a matter of prudence, must be denied when the plaintiff's claim of injury relies on the interests of some third party. ***Elk Grove Unified Sch. Dist. v. Newdow***, 542 U.S. 1 (2004) (because father had been denied by state law of power to bring actions on his child's behalf, he also lacked prudential standing to bring action alleging violation of his child's right). Federal Rule of Civil Procedure **Rule 71(a)** provides that "every action shall be prosecuted in the name of the real party in interest" to ensure that the person asserting the claim for relief is also the person who, according to the governing substantive law is entitled to enforce the right.

Lacking statutory "party" status denies federal court standing to a nonparty who also lacks the necessary case and controversy "pursuant to the arbitration" required by Article III of the United States Constitution. A case is moot on appeal if no live controversy remains at the time the court of appeals hears the case. ***GTE Cal., Inc. v. FCC***, 39 F.3d 940, 945 (9th Cir.1994). When a case becomes moot on appeal, the "established practice" is to reverse or vacate the decision below with a direction to dismiss. ***Arizonans for Official English v. Arizona***, 520 U.S. 43, 71 (1997)

(citing ***United States v. Munsingwear, Inc.***, 340 U.S. 36, 39 (1950)).

IV. No agreement exists between Prudential Equity Group and Rowland that "a judgment of the court shall be entered upon the award made pursuant to the arbitration" under Section 9 of the FAA, so the district court should not have confirmed an "award" upon the application of a non-party. 9U.S.C. § 13

Petitioner Arlene Rowland, a resident and citizen of **California**, contends that there is no legally binding agreement to arbitrate, and therefore no "award" to confirm. Respondent-Plaintiff-Appellee Prudential Equity Group petitioned the Arizona District Court to confirm an unauthenticated and disputed **(R52 - Dism. Mot. Pg. 1, Ln. 8-10)** award of another firm's dismissed without prejudice arbitration. The Federal Arbitration Act 9 U.S.C. § 4 reads:

> "A **party aggrieved** by the alleged failure, neglect, or refusal of another to arbitrate under a **written agreement for arbitration** may petition any United States district court which, save for such agreement, would have jurisdiction under Title 28, in a civil action or in admiralty of the subject matter of a suit **arising out of the controversy between the parties, for an order directing that such arbitration proceed** in the manner provided for **in such agreement.** Five days' notice in writing of such application shall be served upon the party in default. **Service thereof shall be made in the manner provided by the Federal Rules of Civil Procedure**. The court shall hear the parties, and upon being satisfied

that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration **in accordance with the terms of the agreement**. The hearing and proceedings, under such agreement, shall be within the district in which the petition for an order directing such arbitration is filed. If the making of the arbitration agreement or the failure, neglect, or refusal to perform the same be in issue, the court shall proceed summarily to the trial thereof. If no **jury trial** be demanded by the party alleged to be in default, or if the matter in dispute is within admiralty jurisdiction, the court shall hear and determine such issue. Where such an issue is raised, the party alleged to be in default may, except in cases of admiralty, on or before the return day of the notice of application, **demand a jury trial of such issue**, and **upon such demand the court shall make an order referring the issue or issues to a jury** in the manner provided by the Federal Rules of Civil Procedure, or may specially call a **jury for that purpose**. **If the jury find that no agreement in writing for arbitration was made** or that there is no default in proceeding thereunder, the proceeding shall be dismissed. **If the jury find that an agreement for arbitration was made in writing** and that there is a default in proceeding thereunder, the court shall make an order summarily directing the parties to proceed with the arbitration **in accordance with the terms thereof**." **9 U.S.C. § 4**

The District court never "made an order

referring the issue ... to a jury" when Rowland's "answer" made a "demand for a jury trial" of the "issue" of an alleged arbitration agreement with PEG and whether the "award" to PEG, LLC was authentic and legitimate **(R52)**. The district court confirmed the uncertified and inadmissible copy of a legally impermissible "award" **(R35)** of attorney fees in a statutory discrimination dispute in favor of PEG, LLC., a nonparty of the 2003 NASD Uniform Submission Agreements **(R20)**. *See* 9 U.S.C. § 13.

> **NASD Rule 10217**: "For any claim of statutory employment discrimination submitted to arbitration that is subject to a predispute arbitration agreement, a party who is a current or former associated person shall pay a nonrefundable filing fee of **no more than $200** at the time that party asserts a claim. A member that is a party to such an arbitration proceeding under this Rule shall pay the remainder of all applicable arbitration fees set forth in **Rule 10332**. These fees are not subject to allocation in the award [File No. SR-NASD-2005-046].
>
> **NASD Rule 10214:** "The arbitrators shall be empowered to award any relief that would be available in court under the law..."
>
> **NASD Rule 10215**: "The Arbitrators shall have the authority to provide for reasonable attorneys' fee reimbursement, in whole or in part. as part of the remedy in accordance with applicable law."
>
> **NASD NTM 99-96 (1999)**: "The intent of new **Rule 10215** is to allow the award of attorneys'

fees, in whole or in part, as part of the remedy in accordance with applicable law. This accords with Title VII of the Civil Rights Act of 1964, which authorizes a court, in its discretion, to allow the prevailing party, 'a reasonable attorney's fees' as part of the costs. **42 U.S.C. § 2000e5(k)** (1998)." "Plaintiffs may be considered 'prevailing party' for attorneys' fees purposes if they succeed on an significant issue in litigation which achieves some of the benefit the parties sought in bringing suit." ***Hensley v. Eckerhart***, 461 U.S. 424, 433 (1983).

NASD Rule IM-3110(f)(4): "No agreement shall include any condition which limits or contradicts the rules of any self-regulatory organization or limits the ability of the party to file any claim in arbitration or limits the ability of the arbitrators to make an award." "If ... attorneys' fees would be available under applicable law, then the agreement cannot limit parties' rights to request them, nor arbitrators' rights to award them."

The SEC, joining the **Solicitor General** as amicus in ***Mastrobuono***, 115 S. Ct. at 1215 "[A]rgued to the Court that "**NASD Rule 21(f)(4)** forbids the inclusion in broker-client arbitration agreements of provisions limiting the ability of arbitrators to award relief that would be available in a judicial forum. The Rule has an effective date of 9/7/1989; with respect to agreements executed after that date, the Rule has **the force of federal law** and precludes the enforcement of contractual provisions that are inconsistent with its terms." NTM 95-16 (3/1995) 1995 NASD

LEXIS 28; NTM 95-85 (10/1995) 1995 NEXIS LEXIS 122.

V. The district court failed to consider whether there was a valid agreement to arbitrate a dispute between Prudential Equity Group and Rowland, and whether any federal statute or policy renders the claims nonarbitrable.

A. The district court was required to "make an order referring the issue to a jury " when Rowland "demande[ed] a jury trial of the issue" to "find that no agreement in writing for arbitration was made in writing." 9 U.S.C. § 4

The Ninth Circuit reviews *de novo* the grant or denial of a petition to *compel arbitration, or confirm an award* pursuant to the FAA. Courts perform a two-step inquiry to determine whether parties should be compelled to arbitrate a dispute. "First, the court must determine whether the parties agreed to arbitrate the dispute. Once the court finds that the parties agreed to arbitrate, it must consider whether any federal statute or policy renders the claims nonarbitrable." When considering the first question, there are two considerations: " '(1) whether there is a valid agreement to arbitrate between the parties; and (2) whether the dispute in question falls within the scope of that arbitration agreement.' " Although there is a strong federal policy favoring arbitration, "this federal policy favoring arbitration does not apply to the determination of whether there is a valid agreement to arbitrate between the parties." "Because the FAA is at bottom a policy guaranteeing the enforcement of private contractual arrangements, we look first to whether the

parties agreed to arbitrate a dispute, not to general policy goals, to determine the scope of the agreement; ***EEOC v. Waffle House, Inc.***, 534 U.S. 279, 294 (2002). In determining whether an agreement to arbitrate exists, "ordinary contract principles" are applied. *Id.*

The first task of a court asked to compel arbitration of a dispute is to determine whether the parties agreed to arbitrate that dispute. ***Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.***, 473 U.S. 614, 626 (1985). The basic principle that it is for the courts to decide whether the parties have agreed to arbitrate, and that "[t]his determination is generally made on the basis of 'ordinary state-law principles that govern the formation of contracts." ***First Options of Chicago, Inc. v. Kaplan***, 514 U.S. 938, 944 (1995).

B. The Circuits have refused to order arbitration of disputes where one party claims that it is not bound by the arbitration agreement.

The Circuits have refused to order arbitration when a party claims that it was not an original party to the agreement; ***Chastain v. Robinson-Humphrey Co.***, 957 F.2d 851 (11th Cir.1992) (refusing to compel arbitration where one party had not signed the agreement containing the arbitration clause); ***I.S. Joseph Co. v. Mich. Sugar Co.***, 803 F.2d 396 (8th Cir.1986) (holding that question of whether the assignee of party to an agreement including arbitration clause could compel arbitration was for the courts); its signature was forged, ***Opals on Ice Lingerie v. Body Lines Inc.***, 320 F.3d 362 (2d Cir.2003) (refusing to order arbitration where signature on agreement was not

genuine); ***Jolley v. Welch***, 904 F.2d 988, 993-94 (5th Cir.1990) (claims that the signature is forged or the agent lacked authority to bind the principle in this category); or because the person signing on its behalf was acting outside the scope of his authority and thus the party is not bound by the signature, ***Sphere Drake Ins. Ltd. v. All Am. Ins. Co.***, 256 F.3d 587 (7th Cir.2001) (refusing to compel arbitration where party contended that agent who signed the agreement lacked the authority to bind the party), ***Sandvik AB v. Advent Int'l Corp.***, 220 F.3d 99 (3d Cir.2000) (same); ***Three Valleys Mun. Water Dist. v. E.F. Hutton & Co.***, 925 F.2d 1136 (9th Cir.1991) (*same*). In all of these cases, the parties resisting arbitration attack the existence of the entire agreement, not the arbitration clause specifically.

Refusing to order arbitration of a dispute where one of the parties claims that it never signed the agreement, and therefore never agreed to anything, is consistent with the Court's pronouncements that arbitration "does not require parties to arbitrate when they have not agreed to do so," and that "[a]rbitration under the FAA is a matter of consent, not coercion." ***Waffle House,*** at 293-94 (citing ***Volt Info. Scis., Inc. v. Bd. of Trs. of Leland Stanford Jr. Univ.***, 489 U.S. 468, 478-79 (1989). The Court has made clear that arbitration is a matter of private contract, and "it goes without saying that a contract cannot bind a nonparty." ***Waffle House***. at 294.

C. The Federal Arbitration Act provisions are mandatory, not optional, conditions precedent for compelling arbitration or

confirming an award, and the literal reading controls. Prudential did not fulfill the threshold requirements, so the district court should have dismissed the application to confirm an "award" as barred by the terms of the statute. 9 U.S.C. § 2.

The Court has concluded that: a gateway dispute about whether the parties are bound by a given arbitration clause raises a "question of arbitrability" for a court to decide. ***First Options of Chicago*** at 943-946 (holding that a court should decide whether the arbitration contract bound parties who did not sign the agreement); ***John Wiley & Sons, Inc. v. Livingston***, 376 U.S. 543, 546-547 (1964) (holding that a court should decide whether an arbitration agreement survived a corporate merger and bound the resulting corporation). In ***First Options of Chicago v. Kaplan***, 514 U.S. 938 (1995):

> The dispute centered on several agreements to resolve the payment of debts owed by Manuel Kaplan, his wife, and his wholly owned investment company, MK Investments, Inc. MKI had signed an agreement containing an arbitration clause, but the Kaplans had not done so in their personal capacity. First Options moved to compel arbitration, and MKI agreed to arbitrate while the Kaplans refused, arguing that since they had not signed any agreements containing an arbitration clause, they had not agreed to arbitrate any disputes. *Id.* at 940-41. The Court analyzed the problem by distinguishing among three related questions, *Id.* at 942. The first question was the merits of the

dispute-whether the Kaplans owed First Options the money. The second question was whether the parties agreed to arbitrate the merits - the question of arbitrability. And the final question was who should decide the second question. The **unanimous Court** held that absent clear and **unmistakable evidence** that the parties agreed to arbitrate the question of arbitrability, the third question is for the courts, *Id.* at 944. The Court then stated that "[w]hen deciding whether the parties agreed to arbitrate a certain matter [the second question] ... courts generally ... should apply ordinary state-law principles that govern the formation of contracts." *Id.* at 944.

It is clear that because arbitration is a matter of contract, where a party contends that it has not signed any agreement to arbitrate, the court must first determine if there is an agreement to arbitrate before any additional dispute can be sent to arbitration.

VI. Non-Party Prudential Equity Group lacked standing to apply to the district court for confirmation of an alleged arbitration "award" issued to a different firm when the arbitration was dismissed without prejudice.

The federal court doctrine of standing involves constitutional requirements and prudential considerations implicated here. PEG, a limited liability corporation is "asserting the claim [and] has the burden of establishing standing." *See **Colwell v. Dept. of Health and Human Servs.***, 558 F.3d 1112, 1121 (9th Cir. 2009). Standing is jurisdictional and cannot be

waived. *See* ***United States v. Hays***, 515 U.S. 737, 742 (1995). The consent of a third party cannot cure a plaintiff's lack of standing.

The Supreme Court has held that non-party police officers did not have standing to appeal a consent decree settling a discrimination suit against the police department, despite having presented their objections to the district court, because they failed to move to intervene as an initial matter or for purposes of appeal; ***Marino v. Ortiz***, 484 U.S. 301, 303-04 (1988) (*per curiam*) ("we think the better practice is for . . . a non-party to seek intervention for purposes of appeal," denial of which is appealable); ***Karcher v. May***, 484 U.S. 72, 78 (1987) (Legislators who intervened as defendants in their official capacities did not have standing to appeal in their individual capacities after losing their posts ... stating that acts performed by a single person in different capacities are generally treated as acts of different "legal personages").

The Ninth Circuit has held that where a parent union was designated as party on union's side in all five steps of grievance procedure, the local union, in handling presentation of opposition to employer's grievance during first three steps of grievance procedure, had acted as parent's agent, and thus had not been party to grievance proceeding and was not entitled under this title to bring action attacking arbitrator's award on ground that local was suing in its own right as party to grievance proceeding. ***Local 13, Intern. Longshoremen's and Warehousemen's Union v. Pacific Maritime Ass'n***, 441 F.2d 1061 (9th Cir.1971), *cert. denied*, 404 U.S. 1016. The Ninth Circuit has also held that potential, nonparty members of an uncertified

plaintiff class in a class-action lawsuit lacked standing to appeal district court's decision granting lead plaintiff's motion to voluntarily dismiss, where the potential, nonparty members had notice and failed to intervene. ***Employers-Teamsters Local Nos. 175 & 505 Pen. Tr. Fund v. Anchor Cap. Advisors***, 498 F.3d 920, 925 (9th Cir.2007).

VII. Circuits hold that arbitrators exceed their authority and will not enforce awards issued, nor vacate awards, issued to a non-party of the arbitration.

The Ninth Circuit has determined that an arbitrator acted beyond the scope of his authority as a matter of California law, in resolving dispute over a trademark licensing agreement, by attempting to bind all of licensee's affiliates, including relatives who were not parties to the licensing agreement, as relatives who were not parties to the licensing agreement could not be bound by its provisions. ***Comedy Club, Inc. v. Improv West Associates***, 553 F.3d 1277 (9thCir.2009)(*cert. denied* 2009 WL 1648924).

The Second Circuit has said that an "arbitrator exceeded his powers in determining obligations of corporation which was clearly not a party to arbitration proceeding and holding it liable as guarantor under agreement" in ***Orion Shipping & Trading Co. v. Eastern States Petroleum Corp. of Panama,*** S.A., 312 F.2d 299, (2nd Cir.1963) *cert. denied*, 373 U.S. 949. The Second Circuit has also stated that under the "Federal Arbitration Act (FAA), the arbitration panel considering employee's age discrimination claim was without jurisdiction to order employee's attorney to pay

contingency fee back to employee, where attorney was not before arbitration panel in any manner other than as employee's counsel, employee was not before panel with respect to his relationship with his attorney, and neither employee nor attorney had agreed to arbitrate any dispute over their fee contract. It has also said that a "modified award of attorney fees to employee by arbitration panel in employment discrimination proceeding was issued in manifest disregard of the law, ... and ... that panel lacked authority to issue portion of present award requiring employee's attorney to pay contingency fee back to employee. ***Porzig v. Dresdner, Kleinwort, Benson, North America LLC***, 497 F.3d 133 (2nd Cir.2007). *See also:* ***Dundas Shipping & Trading Co., Ltd. v. Stravelakis Bros., Ltd.***, 508 F.Supp. 1000 (S.D.N.Y. 1981)(corporation which was not party to arbitration had no standing to move to vacate award").

The Seventh Circuit has determined that a transaction between a parent of second joint venturer and a bank, for which damages were awarded, was completely separate from an agreement which contained an arbitration provision, and thus was outside scope of arbitration clause and the arbitrator exceeded the scope of his powers, by awarding venturer damages for loss it had not suffered, in ***Eljer Mfg., Inc. v. Kowin Development Corp.***, 14 F.3d 1250 (7th Cir.1994), *rehearing and suggestion for rehearing en banc denied; cert. denied*, 512 U.S. 1205. The Seventh Circuit has also said "had there been no arbitration clause at all in contract to acquire an accounting franchise, ... and arbitrator nevertheless went ahead and made award against them, he might well have exceeded his powers, ... so as to permit a court asked to confirm the award to refuse to do so" in ***Comprehensive Accounting Corp. v.***

Rudell, 760 F.2d 138 (7th Cir.1985).

The Ninth Circuit's memorandum affirming the Arizona District Court confirmation of non-party Prudential Equity Group, LLC's alleged "award" of a cancelled arbitration of another firm further conflicts with the same Arizona District Court's November 24, 2009 order of District Court Judge Mary H. Murguia in the case ***See More Light Investments v. Morgan Stanley DW Inc.*** Case No. 08-580-PHX-MNM (Slip Copy, 2008 WL-5044557 (D.Ariz.)). In the last sentence of paragraph three of the order District Court Judge Murguia states: "The court also directed Mr. Licht to explain why he had standing to bring this action nonwithstanding the fact that he was not a party to the underlying arbitration.." Dr. Licht had argued:

> "that since he represented See More Light Investments during the arbitration proceeding, he, as an individual, should be considered to have been a party to that action. (Dkt.#26 at 5-8)" [II. Discussion, Par. 2].

> "The Federal Arbitration Act authorizes parties to an arbitration to apply to vacate the arbitration at the district court. 9 U.S.C. 10(a) .... As a non-party to the underlying arbitration, Dr. Licht lacks standing to challenge it. *See* ***Dundas Shipping & Trading Co., Ltd. v. Stravelakis Bros., Ltd.***, 508 F.Supp. 1000, 1003 (S.D.N.Y. 1981) .... 3 Fed. Proc. * 4:134 (2008) ("One who is not a party to the arbitration has no standing to challenge an award."). Moreover, the fact that Dr. Licht owns a portion of See More Light Investments is not sufficient to create standing

> because he was not a party to the underlying arbitration. *See Also* ***Morrison-Knudsen Co. v. CHG International, Inc.***, 811 F.2d 1209, 1214 (9th Cir. 1987) ("An indirect stake in another party's claim is insufficient to create standing on appeal.") Thus, Dr. Licht's motion to amend the case caption to include Dr. Seymour Licht in a personal capacity as co-plaintiff (Dkt.# 15) is denied on the grounds that such an amendment would be futile. ***Rutman Wine Co.. v. E.& J. Gallo Winery***, 829 F.2d 729, 738 (9th Cir. 1987) ...." [II. Discussion, Par. 3].

Prudential Equity Group, LLC was a non-party to the 2003 NASD Uniform Submission Agreement, and a non-party to the cancelled arbitration, and was not the firm, nor employer of Rowland's 2002 EEOC Charge of workplace statutory discrimination, sexual harassment, and retaliation against her broker-dealer employer, Prudential Securities, Inc., which became known as Wachovia Securities, LLC on July 1, 2003. Prudential Financial, Inc., the parent firm of Prudential Securities, Inc. transferred Rowland and substantially all of its registered financial advisors to its new joint venture with Wachovia Corporation on July 1, 2003.

Rowland never had any relationship with Prudential Equity Group, nor was she ever employed with Prudential Equity Group. Prudential Equity Group was never a party to the NASD Dispute Resolution, Inc. arbitration cancelled and dismissed without prejudice in 2006 after broker-dealer Prudential Securities, Inc. became defunct and was barred by the NASD By-laws and Rules of Arbitration under the National Association of Securities Dealers. Prudential

Equity Group, LLC was formed in the state of Delaware in February 2004, after the NASD Panel arbitrators were selected in October 2003 and would have been further barred under the NASD Dispute Resolution Rules of Arbitration from joining as a party to the NASD arbitration by amendment, *after* the arbitrators were selected.

VIII. Prudential Equity Group and Rowland never had any agreement at all, and the district court failed to apply state law to decide at the outset whether an agreement was reached.

Rowland attacks the very existence of any agreement. There is no written agreement to arbitrate with PEG in the district court record, a prerequisite to confirm an arbitration award under the Federal Arbitration Act. 9 U.S.C. § 13(a). Validity is being attacked on a basis that there was never an agreement in general, rather than an arbitration clause in particular. It is a fundamental principle that arbitration is a matter of contract which cannot be forced upon a party absent its consent. [14] It is perfectly true that in

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[14] Section 10 of FAA permits courts to vacate arbitrators' awards "[w]here the arbitrators exceeded their powers." 9 U.S.C. § 10(a)(4). Because "arbitration is simply a matter of contract between the parties," ***First Options of Chicago, Inc. v. Kaplan***, 514 U.S. 938, 943 (1995), courts look to the parties' contract to determine the powers the parties intended to bestow upon the arbitrator. "Arbitration under the [FAA] is a matter of consent, not coercion, and parties are generally free to structure their arbitration agreements as they see fit." ***Mastrobuono v. Shearson Lehman Hutton, Inc.***, 514 U.S. 52, 57 (1995). A court may reverse an arbitrator's award on contractual grounds "where an award is

general a third-party beneficiary can enforce a contract, but this is a weak premise for inferring an intent to allow third parties to petition a court to confirm a §9 "award." *See* ***Arthur Andersen LLP v. Carlisle***, 129 S.Ct. 1896 (2009) ("a litigant who was not a party to the relevant arbitration agreement may invoke § 3 if the relevant state contract law allows him to enforce the agreement."). "Laws which subsist at the time and place of the making of a contract, and where it is to be performed, enter into and form a part of it, as fully as if they had been expressly referred to or incorporated in its terms. This principle embraces alike those laws which affect its construction and those which affect its enforcement or discharge." ***Farmers and Merchants Bank of Monroe v. Federal Reserve Bank of Richmond***, 262 U.S. 649, 660, (1923). A contract has no legal force apart from the law that acknowledges its binding character.

Because the panel arbitrators dismissed Rowland's NASD 2003 Statement of Claim, there could be no § 3 stay required of her claims that may be "referable to arbitration under an agreement in writing." The term "**parties**" in § 3 refers to **parties to the litigation** rather than **parties to the contract**. The adjacent provision, which explicitly refers to the "subject matter of a suit arising out of the controversy between the parties," **9 U.S.C. § 4**, unambiguously refers to adversaries in the action, and "identical words and

---

contrary to the plain language of the [contract]."

phrases within the same statute should normally be given the same meaning," ***Powerex Corp. v. Reliant Energy Services, Inc.***, 551 U.S. 224, 232 (2007).

In § 9 the Federal Arbitration Act unambiguously states: If the **parties in their agreement** have agreed that a judgment of the court shall be entered upon the **award made pursuant to the arbitration** ... then ... after the award is made **any party to the arbitration** may apply to the court ....for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected as prescribed ..... If no court is specified **in the agreement of the parties**, then such application may be made to the United States court in and for the district within which such award was made." PEG did not qualify to invoke the procedures under § 9. There is no written "agreement" between Rowland and PEG, nor was PEG a "party to the arbitration" that was cancelled. Moreover, Rowland was never employed by PEG, and PEG was not subject of her 2002 EEOC Charge of employment discrimination, sexual harassment, and retaliation that she submitted to arbitration under the NASD Dispute Resolution, Inc. in 2003.

Under the Supreme Court's rationale of both the opinion and the dissent in the recent ***Arthur Andersen LLP v. Carlisle***, 129 S.Ct. 1896 (2009), decision, a § 3 stay of litigation minimally requires "a litigant" who wishes to stay the litigation and compel arbitration. Prudential Equity Group, now a defunct firm; is not a "litigant," and never was a "litigant," of Rowland's 2002 EEOC Charge submitted for arbitration. If Prudential Equity Group is not a litigant, and is also not a "party" of any agreement with Rowland, the plain language of § 9

precluded it from applying to court to confirm an uncertified "award" of some contrived defense counsel plan to collect attorney fees incurred while defending Rowland's statutory claims of workplace discrimination, dismissed from arbitration without prejudice, against another defunct firm, Prudential Securities, Inc.

The provisions of the FAA do not alter background principles of state contract law regarding the scope of agreements (including the question of who is bound by them). Indeed § 2 and § 10 explicitly retain an external body of law governing revocation (such grounds "as exist at law or in equity"). "[S]tate law," therefore, is applicable to determine which contracts are binding under § 2 and enforceable under § 3 "if that law arose to govern issues concerning the validity, revocability, and enforceability of contracts generally." ***Perry v. Thomas***, 482 U.S. at 493, n. 9 (1987); ***First Options***, 514 U.S. at 944. "Although federal law requires that "questions of arbitrability ... be addressed with a healthy regard for the federal policy favoring arbitration." ***Moses H. Cone Memorial Hospital v. Mercury Constr. Corp.***, 460 U.S. 1, 24-25 (1983), it cannot possibly require the disregard of state statute of frauds, and permit two nonparty firms without a dispute and lacking the § 13(a) written agreement, to file petitions to confirm an alleged uncertified "award" of an arbitration that never occurred.

Here, the Arizona District Court confirmed an "award" of **$137,795.82** to the benefit of Prudential Equity Group, Inc. on March 25, 2008, and issued a judgment in favor of a different firm, Prudential Equity Group, LLC for **$137,795.82** on December 8, 2008. In a short Memorandum, the Ninth Circuit Court of Appeals

affirmed on January 11, 2010. Where the very existence of any agreement is disputed, it is for the courts to decide at the outset whether an agreement was reached, applying state-law contract principles.

IX. CONCLUSION

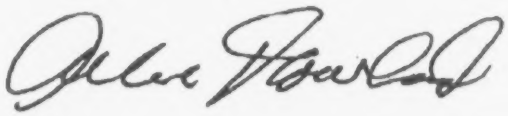
The virtue of expediting proceedings to confirm arbitration awards under the FAA can never justify what occurred in this case: a jury demand ignored and a court decision made where no evidence was presented on issues of material fact disputed. Informality can go only so far. Here, there were no sworn party or witness declarations of evidentiary quality, no offers of proof, and no testimony on the disputed factual issues. The district court's decision was based upon counsel's *unsigned* Notice to Confirm (D.Dkt. 1 - viewable on the district court electronic filing system or PACER), filed late by a California attorney unauthorized to practice law in Arizona, falsely indicating *pro hac vice* status for the case. PEG manufactured diversity jurisdiction when it had the burden to prove the parties, including the members of the limited liability corporation, were diverse when challenged.

That one of the parties later disputes the enforceability of that *agreement* does not change the fact that at some point in time, the parties reached an agreement, and that agreement included the decision to arbitrate disputes arising out of the agreement. The existence of this agreement provides the arbitrator with the authority required to decide whether the agreement will continue to exist. A finding of an arbitrator that does not emanate from an agreement to arbitrate is *ultra vires*; ***AT & T Tech., Inc. v. Comm. Workers***, 475

U.S. 643, 648-49 (1986)) ("arbitrators derive their authority to resolve disputes only because the parties have agreed in advance to submit such grievances to arbitration." The arbitrators *never* had any authority to "award" attorney costs and fees to Prudential Equity Group, LLC.

The requirements set forth in the Federal Arbitration Act are not to be looked upon as mere technicalities to be accepted with cold reserve and embraced casually. They are to be taken seriously as a means of carrying out the important public policy of providing a fair alternate dispute resolution forum. The district court's judgment in favor of Prudential Equity Group, LLC, and confirmation in favor of Prudential Equity Group, Inc. should each be vacated under the circumstances of this case's record.

Dated: June 27, 2010 Respectfully submitted,



Arlene D. Rowland, Petitioner Pro Se
P.O. Box 7591, Ventura, CA 93006

APPENDIX

United States Court of Appeals,
Ninth Circuit.

PRUDENTIAL EQUITY GROUP, LLC, Plaintiff-Appellee,
v.
Arlene D. ROWLAND, Defendant-Appellant.

No. 08-15972.

Submitted Dec. 15, 2009. FN*

FN* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R.App. P. 34(a)(2).

Deborah Jean Broyles, Reed Smith, LLP, San Francisco, CA, Linda S. Husar, Esquire, Reed Smith LLP, Los Angeles, CA, for Plaintiff-Appellee.

Arlene D. Rowland, Ventura, CA, pro se.

Appeal from the United States District Court for the District of Arizona, Earl H. Carroll, District Judge, Presiding. **D.C. No. 2:07-CV-00801-EHC**.

Before: GOODWIN, WALLACE, and CLIFTON, Circuit Judges.

MEMORANDUM FN**

FN** This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

**1 Arlene D. Rowland appeals pro se from the district court's judgment confirming an arbitration award in favor of Prudential Equity Group, LLC under the Federal Arbitration Act ("FAA"), 9 U.S.C. § 9, and denying her motions for reconsideration under Fed.R.Civ.P. 59(e) and 60(b). We have jurisdiction under 28 U.S.C. § 1291. *592 We review de novo the confirmation of an arbitration award and review for clear error any district court factual findings that underlie its decision. *Employers Ins. of Wausau v. Nat'l Union Fire Ins. Co. of Pittsburgh*, 933 F.2d 1481, 1485 (9th Cir.1991). We review for abuse of discretion the denial of a motion for reconsideration. *Sch. Dist. No. 1J, Multnomah County, Or. v. ACandS, Inc.*, 5 F.3d 1255, 1262 (9th Cir.1993). We affirm.

The district court properly confirmed the arbitration award because Prudential filed a timely application, the parties agreed that a court could enter judgment upon the arbitration award, and neither party moved to vacate, modify, or correct the award as prescribed by the FAA. *See* 9 U.S.C. § 9 (a court must grant an application to confirm an arbitration award brought within one year after the award is made so long as the parties who arbitrated the dispute agreed that a court would be able to enter judgment upon the arbitration award "unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title").

Further, contrary to Rowland's contentions, the district court correctly concluded that venue was proper because the award was issued in Arizona and the district court had diversity jurisdiction. *See* 9 U.S.C. § 9 (if no court is

specified in an arbitration agreement then a party may apply "to the United States court in and for the district within which such award was made"); *Carter v. Health Net of Calif., Inc.*, 374 F.3d 830, 836 (9th Cir.2004) (FAA is not a grant of subject matter jurisdiction and therefore a federal court must have an independent jurisdictional basis).

The district court also did not abuse its discretion in denying Rowland's motions for reconsideration because she did not demonstrate grounds for such relief. *See Sch. Dist. No. 1J*, 5 F.3d at 1262-63 (setting forth requirements for reconsideration under Fed.R.Civ.P. 59(e) and 60(b)).

Rowland's remaining contentions are not persuasive.

AFFIRMED.

C.A.9 (Ariz.),2010.
Prudential Equity Group, LLC v. Rowland
362 Fed.Appx. 591, 2010 WL 76432 (C.A.9 (Ariz.))

END OF DOCUMENT

FILED

MAR 30 2010
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PRUDENTIAL EQUITY GROUP, LLC,
Plaintiff - Appellee,

v.

ARLENE D. ROWLAND, Defendant - Appellant.

No. 08-15972
D.C. No. 2:07-CV-00801-EHC
District of Arizona, Phoenix

ORDER

Before: GOODWIN, WALLACE and CLIFTON, Circuit Judges.

The panel has voted to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R.App. P. 35.

Arlene D. Rowland's petition for panel rehearing and petition for rehearing en banc are denied. No further filings shall be accepted in this closed case.

FILED MAR 30 2010
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

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UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

FILED
APR 12 2010

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

No. 08-15972

PRUDENTIAL EQUITY GROUP, INC.,
Plaintiff - Appellee
v.
ARLENE D. ROWLAND, Defendant - Appellant

D.C. No. 2:07-CV-00801-EHC
U.S. District Court for Arizona, Phoenix

MANDATE

The judgment of this Court, entered January 11, 2010, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:
Molly C. Dwyer Clerk of Court
Gabriela Van Allen Deputy Clerk

FILED

FEB 01 2010

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PRUDENTIAL EQUITY GROUP, LLC, Plaintiff - Appellee, v. ARLENE D. ROWLAND, Defendant - Appellant.	No. 08-15972 D.C. No. 2:07-CV-00801-EHC District of Arizona, Phoenix ORDER

Before: GOODWIN, WALLACE and CLIFTON, Circuit Judges.

Arlene D. Rowland's motion for extension of time is granted. The petition for panel rehearing and petition for rehearing en banc are due on February 24, 2010.

LHS Research

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

No. 07-801-PHX-EHC

JUDGMENT

Prudential Equity Group, LLC, Plaintiff,
vs.
Arlene D. Rowland, Defendant.

On March 28, 2008, the Court issued an Order, granting Plaintiff Prudential Equity Group, LLC's application to confirm an arbitration award, in Arlene D. Rowland v. Prudential Equity Group, LLC, NASD Dispute Resolution Arbitration No. 03-01179 ("NASD Award"), and denying Defendant Arlene D. Rowland's Motion for Dismissal. (Dkt. 28.) The Court now enters judgment against Defendant consistent with its March 28, 2008 Order.

Accordingly,

IT IS ORDERED that the NASD Award is confirmed – and Defendant's Motion for Dismissal is denied, for the reasons set forth in the Court's March 25, 2008 Order.

IT IS FURTHER ORDERED that Judgment is entered in favor of Prudential Equity Group, LLC, in

accordance with the NASD Award, in the amount of $137,795.82, plus interest at the legal rate from April 21, 2006, until the judgment is satisfied in full.

DATED this 8th day of December, 2008.

Earl H. Carroll
United States District Judge

Not Reported in F.Supp.2d, 2008 WL 824001 (D.Ariz.)

United States District Court, D. Arizona.

PRUDENTIAL EQUITY GROUP, INC., Plaintiff,
v.
Arlene D. ROWLAND, Defendant.

No. CV 07-00801-PHX-EHC.

March 25, 2008

Deborah J. Broyles, Thelen Reid Brown Raysman & Steiner LLP, San Francisco, CA,
Linda Stephanie Husar, Thelen Reid Brown Raysman & Steiner LLP, Los Angeles, CA, for Plaintiff.

Arlene D. Rowland, Ventura, CA, pro se.

ORDER

EARL H. CARROLL, District Judge.

*1 Before the Court is Plaintiff's Application to Confirm Arbitration Award (Dkts.1-9), Defendant's Motion for Dismissal (Dkt.19), and Plaintiff's Opposition to Defendant's Motion for Dismissal; Request for Confirmation of Arbitration Award (Dkt.25). The Court finds this matter suitable for decision without oral argument.

I. Background

Defendant Rowland commenced arbitration of an employment dispute before the National Association of Securities Dealers ("NASD") on February 19, 2003.

Defendant signed the NASD Uniform Submission Agreement. The Uniform Submission Agreement provided, inter alia, that the parties agreed to "abide by an perform any award(s) rendered pursuant to the Submission Agreement[,]" "that a judgment and any interest due thereon may be entered upon such award(s), and" that the parties consented to "submit to the jurisdiction of any court of competent jurisdiction which may properly enter such judgment." On March 17, 2005, after two years of discovery and several rulings, Defendant moved for dismissal of her arbitration claim without prejudice. The arbitration panel conditionally granted Defendant's motion to dismiss subject to Defendant's express agreement to pay an award of costs and attorneys fees to Plaintiff.

Defendant expressly accepted these terms in a letter dated June 17, 2005. On April 26, 2006, the arbitrators issued their final award dismissing Defendant's arbitration without prejudice and ordering that Defendant pay Plaintiff $137,795.82, plus interest at the legal rate from the date of the award until paid. Defendant failed to voluntarily pay the award. On April 16, 2007, Plaintiff filed this action to confirm the award and obtain a judgment.

II. Analysis

The Federal Arbitration Act, 9 U.S.C. § 9, provides that a court must grant an application to confirm an arbitration award brought within one year after the award is made so long as the parties who arbitrated the dispute agreed that a court would be able to enter judgment upon the arbitration award "unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title [9 U.S.C.]." 9 U.S.C. § 9. The Arbitration Act is not, however, a grant of jurisdiction. Therefore, the Court must have an independent jurisdictional basis. *See General Atomic Co. v. United Nuclear Corp.*, 655 F.2d 968, 969 (9th Cir.1981). For purposes of diversity jurisdiction, the amount in controversy is the amount at stake in the underlying arbitration dispute, and not the amount of the arbitration award. *See Theis Research, Inc. v. Brown & Bain*, 386 F.3d 1180, 1181 (9th Cir.2004). FN1

> FN1. The opinion of the Ninth Circuit in Theis *Research, Inc. v. Brown & Bain*, 400 F.3d 659, 664 (9th Cir.2005), is consistent, though the Court discusses instances where the amount in controversy is not met. In this case, both the award and the amount sought in the underlying arbitration satisfy the amount in controversy requirement.

Plaintiff brought this application to confirm the arbitration award on April 16, 2007, within one year of the April 21, 2006, award. The parties' submission agreement provided that the parties agreed to "abide by an perform any award(s) rendered pursuant to the Submission Agreement[,]" "that a judgment and any interest due thereon may be entered upon such award(s), and" that the parties consented to "submit to

the jurisdiction of any court of competent jurisdiction which may properly enter such judgment." Venue is proper in the District of Arizona because the arbitration award was made here. 9 U.S.C. § 9.

Further, the complete diversity exists because Plaintiff, a corporate entity, is a citizen of both Delaware and New York, and Defendant is either a citizen of Arizona or California. FN2 The amount in controversy in the underlying arbitration exceeded $1 million and the actual award exceeded $75,000. Thus, the Court has an independent jurisdictional basis pursuant to 28 U.S.C. § 1332.

> FN2. Defendant maintains a Tempe, Arizona address on file with this Court, though she now claims to reside in California.

III. Conclusion

*2 Having determined that the Court has jurisdiction to confirm the arbitration award and that the requirements of 9 U.S.C. § 9 are met, the Court must grant Plaintiff's application. The Court has also reviewed Defendant's arguments in her motion to dismiss and finds them to be without merit.

Accordingly,

IT IS ORDERED denying Defendant's Motion for Dismissal (Dkt.19).

IT IS FURTHER ORDERED granting Plaintiff's Application to Confirm Arbitration Award (Dkts.1-9), and confirming the award of $137,795.82, plus interest at

the legal rate from April 21, 2006, until satisfied in full.

DATED this 25th day of March, 2008.

Earl H. Carroll
United States District Judge

Not Reported in F.Supp.2d, 2008 WL 824001 (D.Ariz.)
United States District Court, D. Arizona.

PRUDENTIAL EQUITY GROUP, LLC, Plaintiff,
v.
Arlene D. ROWLAND, Defendant.

No. CV 07-801-PHX-EHC.

May 16, 2008.

Deborah J. Broyles, Thelen Reid Brown Raysman & Steiner LLP, San Francisco, CA,
Linda Stephanie Husar, Thelen Reid Brown Raysman & Steiner LLP, Los Angeles, CA, for Plaintiff.

Arlene D. Rowland, Ventura, CA, pro se.

ORDER

EARL H. CARROLL, District Judge.

*1 On April 16, 2007, Plaintiff Prudential Equity Group, LLC ("PEG") filed an application to confirm an arbitration award in the amount of $137,795.82. (Dkts.1-9). Defendant Rowland, representing herself, filed a motion to dismiss on June 19, 2007. (Dkt.19). On March 25, 2008, the Court denied Rowland's motion to dismiss and confirmed PEG's arbitration award (*See* Dkt. 28). Having found that complete diversity existed, venue was proper, and Plaintiff brought a timely application, the Court confirmed the award. *See* 9 U.S.C. § 9.

Rowland has filed a motion to vacate the confirmation order (Dkt.29) and a motion to void or vacate the

confirmation order (Dkt.30). PEG filed a motion for extension of time to respond to Rowland's motions. PEG cited Rowland's numerous factual and legal allegations contained in her motions and that PEG was going to file a motion for sanctions under Rule 11(b) of the Federal Rules of Civil Procedure for the 60-day extension. The Court granted PEG's motion to extend its response deadline up to and including June 24, 2008. In addition, the Court ordered that a clerical error be corrected; Plaintiff's correct name is Prudential Equity Group, LLC, *not* Prudential Equity Group, Inc. (*See* Dkt. 39).

Rowland filed a Motion for Reconsideration (Dkt.41) in which she opposes both the grant for extension of time and the correction of Plaintiff's name.

Local Rule of Civil Procedure 7.2(g)(1) provides that "[t]he Court will ordinarily deny a motion for reconsideration of an Order absent a showing of manifest error or a showing of new facts or legal authority that could not have been brought to its attention earlier with reasonable diligence." LRCiv. 7.2(g)(1) (2008). Neither showing has been met.

First, Rowland objects on the grounds that she did not receive an exact copy of the proposed form of order; she compares the copy she received with the Court's Order. The Court has discretion to modify the proposed order and did so in this case.

Second, Rowland claims she was denied due process because she was not given the opportunity to file a responsive motion opposing the extension of time. However, the moving party need only state the position of the opposing party regarding a motion for extension

of time or indicate that attempts to contact the opposing party were unsuccessful, which PEG did. There is no provision that the opposing party must be given the opportunity to file a response. *See* LRCiv. 7.3.

Third, Rowland contends she is prejudiced by the Court's grant of time to file a "post-judgment FRCP Rule 11 motion." However, a Rule 11 motion for sanctions is not before the Court. Thus, Rowland's arguments against a Rule 11 motion are premature.

Fourth, Rowland argues that Prudential Equity Group, Inc. does not have standing to claim the arbitration award and changing the name to Prudential Equity Group, LLC circumvents the "Real Party In Interest Rule." (Dkt.39, pp. 6-9). On May 18, 2007, however, Rowland acknowledged receipt of PEG's request for waiver of service of summons "in the action of *Prudential Equity Group, LLC v. Arlene Rowland.* (Dkt.14, p. 2). Every single document, including the initial application, filed by PEG reflects Plaintiff's name as Prudential Equity Group, LLC.

*2 Rowland has filed a Notice of Appeal to the Ninth Circuit (Dkt.31) and an Application for Permission to Appeal in Forma Pauperis (Dkt.32). Rowland was previously employed as a "registered and licensed Financial Advisor." (Dkt.32, p. 2). She claims that her unemployment status is "directly related" to her "EEOC claims of December 2002" and "Prudential's continued interference" with her employment. (Dkt.32, p. 2). She is "currently enrolled in a full-time post-graduate degree program" and pays for her education without any financial aid.

Accordingly,

IT IS ORDERED that Defendant's Motion for Reconsideration (Dkt.41) is **denied.**

IT IS FURTHER ORDERED that Defendant's Application for Permission to Appeal in Forma Pauperis (Dkt.32) is **denied** without prejudice, with leave to file a financial affidavit.

D.Ariz.,2008.
Prudential Equity Group, LLC v. Rowland
Not Reported in F.Supp.2d, 2008 WL 2113388 (D.Ariz.)

END OF DOCUMENT

U.S. District Court
DISTRICT OF ARIZONA (Phoenix Division)
CIVIL DOCKET FOR CASE #: 2:07-cv-00801-EHC

Prudential Equity Group, LLC. v. Rowland
Assigned to: Judge Earl H Carroll

Case in other court: Ninth Circuit, 08-15972

Cause: 05:704 Labor Litigation
Date Filed: 04/16/2007 Date Terminated: 03/25/2008
Jury Demand: Defendant
Nature of Suit: 190 Contract: Other
Jurisdiction: Diversity

Plaintiff Prudential Equity Group, LLC
represented by Deborah J Broyles, Reed Smith LLP
2 Embarcadero Ctr, Ste 2000, San Francisco, CA 94111
415-543-8700 Fax: 415-391-8269
Email: dbroyles@reedsmith.com
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LEAD ATTORNEY - ATTORNEY TO BE NOTICED

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355 S Grand Ave, Ste 2900, Los Angeles, CA 90071
213-457-8000 Fax: 213-457-8080
Email: lshusar@reedsmith.com
LEAD ATTORNEY - ATTORNEY TO BE NOTICED

Defendant Arlene D Rowland PRO SE
Arlene D Rowland, PO Box 7591, Ventura, CA 93006

District Court Docket Text As of June 27, 2010

Date Filed #

04/16/2007 1 Notice re Notice of Application to Confirm Award by Prudential Equity Group, Inc. (Broyles, Deborah) (Entered: 04/16/2007)

04/16/2007 2 BRIEF re 1 Other Notice Civil Cover Sheet by Plaintiff Prudential Equity Group, Inc.. (Broyles, Deborah) (Entered: 04/16/2007)

04/16/2007 3 Notice re Application to Confirm Award by Prudential Equity Group, Inc. (Attachments: # 1 Exhibit a)(Broyles, Deborah) (Entered: 04/16/2007)

04/16/2007 4 APPLICATION re: Exhibits B-D2 by Plaintiff Prudential Equity Group, Inc.. (Attachments: # 1 Exhibit B# 2 Exhibit C# 3 Exhibit D# 4 Exhibit D2)(Broyles, Deborah) (Entered: 04/16/2007)

04/16/2007 5 Exhibit List G, H by Prudential Equity Group, Inc... (Attachments: # 1 Exhibit G# 2 Exhibit H)(Broyles, Deborah) (Entered: 04/16/2007)

04/16/2007 6 DECLARATION of Declaration re 1 Other Notice by Plaintiff Prudential Equity Group, Inc.. (Broyles, Deborah) (Entered: 04/16/2007)

04/16/2007 7 APPLICATION re: Application to

Confirm Award by Plaintiff Prudential Equity Group, Inc.. (Broyles, Deborah) (Entered: 04/16/2007)

04/16/2007 8 Exhibit List Exhibit E to Application to Confirm Award by Prudential Equity Group, Inc... (Broyles, Deborah) (Entered: 04/16/2007)

04/16/2007 9 Exhibit List Exhibit F to Application to Confirm Award by Prudential Equity Group, Inc... (Broyles, Deborah) (Entered: 04/16/2007)

04/16/2007 11 Filing fee paid 4/17/2007, receipt number PHX056737. This case has been assigned to the Honorable Earl H. Carroll. All future pleadings or documents should bear the correct case number: CV07-801-PHX-EHC. Notice of Availability of Magistrate Judge to Exercise Jurisdiction form attached. (HIH) (Entered: 04/18/2007)

05/11/2007 12 MOTION for Admission Pro Hac Vice as to attorney Deborah J Broyles on behalf of plaintiff Prudential Equity Group, Inc.. (BAS,) (Entered: 05/11/2007)

05/11/2007 PRO HAC VICE FEE PAID. $ 100, receipt number PHX057708 as to Deborah J Broyles. (BAS,) (Entered: 05/11/2007)

05/11/2007 13 **ORDER** pursuant to General Order 05-25 granting 12 Motion for Admission Pro Hac Vice.Per the Court's Administrative Policies and Procedures Manual, applicant has five (5) days in which to register as a user of the Electronic Filing System. Registration to be accomplished via the court's website at www.azd.uscourts.gov. (BAS,)(This is a TEXT

ENTRY ONLY. There is no.pdf document associated with this entry.) (Entered: 05/11/2007)

05/18/2007 14 **WAIVER OF SERVICE** Returned Executed by Prudential Equity Group, Inc.. (Broyles, Deborah) (Entered: 05/18/2007)

05/21/2007 17 Notice by Arlene D Rowland re 14 **Waiver of Service Executed** (SAT) (Entered: 05/23/2007)

05/22/2007 15 MOTION for Admission Pro Hac Vice as to attorney Linda S. Husar Pursuant to LRCiv 83.1(b)(3) by Prudential Equity Group, Inc.. (Husar, Linda) (Entered: 05/22/2007)

05/22/2007 16 LODGED Proposed ORDER OF ADMISSION OF ATTORNEY PRO HAC VICE (LINDA S. HUSAR) re: 15 MOTION for Admission Pro Hac Vice as to attorney Linda S. Husar Pursuant to LRCiv 83.1(b)(3). Document to be filed by Clerk if Motion to Leave to File or Amend is granted. Filed by Prudential Equity Group, Inc.. (Husar, Linda) (Entered: 05/22/2007)

05/23/2007 **PRO HAC VICE FEE PAID**. $ 100, receipt number PHX058189 as to Linda Stephanie Husar. (BAS,) (Entered: 05/23/2007)

05/23/2007 18 **ORDER** pursuant to General Order 05-25 granting 15 Motion for Admission Pro Hac Vice.Per the Court's Administrative Policies and Procedures Manual, applicant has five (5) days in which to register as a user of the Electronic Filing System. Registration to be accomplished via the court's website

at www.azd.uscourts.gov. (BAS,)(This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) (Entered: 05/23/2007)

06/19/2007 19 MOTION for Dismissal, Lack of Jurisdiction, Improper Venue, No Federal Cause of Action by Arlene D Rowland. (Attachments: # 1 # 2)(SAT) (Entered: 06/20/2007)

06/25/2007 20 ANSWER to Complaint with Jury Demand by Arlene D Rowland.(DMT,) (Entered: 06/25/2007)

07/03/2007 21 First MOTION for Extension of Time To Respond To Defendant Rowland's Motion For Dismissal (Lack of Jurisdiction, Improper Venue, No Federal Cause Of Action) by Prudential Equity Group, Inc.. (Broyles, Deborah) (Entered: 07/03/2007)

07/06/2007 22 **ORDER** - Plaintiff's 21 Motion for Extension of Time to file a Response to Defendant's Motion for Dismissal is granted. IT IS ORDERED that Plaintiff's Response to Defendant's Motion for Dismissal shall be filed by August 6, 2007. Signed by Judge Earl H Carroll on 7/6/07.(SAT) (Entered: 07/06/2007)

08/01/2007 23 Second MOTION for Extension of Time NOTICE OF MOTION AND MOTION TO EXTEND THE TIME TO RESPOND TO DEFENDANT ROWLAND'S - MOTION FOR DISMISSAL by Prudential Equity Group, Inc.. (Attachments: # 1 Text of Proposed Order Proposed Order)(Broyles, Deborah) (Entered: 08/01/2007)

08/02/2007 24 ORDER - Upon Plaintiff's 23

Motion to Extend Time To Respond to Defendant Rowland's Motion for Dismissal, IT IS ORDERED THAT Plaintiff shall have up to and including August 13, 2007, to respond to Defendant's Motion for Dismissal. Signed by Judge Earl H Carroll on 8/2/07.(SAT) (Entered: 08/02/2007)

08/13/2007 25 OBJECTION OPPOSITION TO DEFENDANT ARLENE ROWLAND'S MOTION FOR DISMISSAL (LACK OF JURISDICTION, IMPROPER VENUE, NO FEDERAL CAUSE OF ACTION); REQUEST FOR CONFIRMATION OF ARBITRATION AWARD by Plaintiff Prudential Equity Group, Inc. filed by Prudential Equity Group, Inc.. (Broyles, Deborah) (Entered: 08/13/2007)

08/13/2007 26 DECLARATION of DECLARATION OF DEBORAH J. BROYLES IN SUPPORT OF PLAINTIFF PRUDENTIAL EQUITY GROUP, LLC'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS THE APPLICATION TO CONFIRM THE ARBITRATION AWARD by Plaintiff Prudential Equity Group, Inc. filed by Prudential Equity Group, Inc.. (Attachments: # 1 Exhibit Exhibits A - D to Declaration)(Broyles, Deborah) (Entered: 08/13/2007)

08/13/2007 27 Notice re PLAINTIFF PRUDENTIAL EQUITY GROUP, LLC'S REQUEST FOR JUDICIAL -NOTICE IN SUPPORT OF ITS OPPOSITION TO MOTION TO DISMISS 19 APPLICATION TO CONFIRM ARBITRATION AWARD by Prudential Equity Group, Inc. (Broyles, Deborah) Modified on 8/21/2007 (LAD). (Entered: 08/13/2007)

03/25/2008 28 **ORDER** - IT IS ORDERED denying Defendant's 19 Motion for Dismissal. FURTHER ORDERED granting Plaintiff's Application to Confirm Arbitration Award (Dkts. 1- 9), and confirming the award of $137,795.82, plus interest at the legal rate from April 21, 2006, until satisfied in full. Signed by Judge Earl H Carroll on 3/25/08. (SAT) (Entered: 03/25/2008)

04/11/2008 29 MOTION to Vacate Confirmation Order, FRCP Rule 60(b), Lack of Jurisdiction Statute of Limitations Bar by Arlene D Rowland. (SAT) (Entered: 04/11/2008)

04/11/2008 30 MOTION to Void or Vacate March 25, 2008 Confirmation Order, FRCP Rule 59(e), FRCP Rule 60(b), Fraud on the Court, Mistake of Fact, Constitutional Infirmities, Substantive Error, Extraordinary Circumstances by Arlene D Rowland. (Attachments: # 1 Exhibits)(SAT) (Entered: 04/11/2008)

04/11/2008 31 **NOTICE OF APPEAL** to 9th Circuit, as to 28 Order on Motion to Dismiss Case/Lack of Jurisdiction, by Arlene D Rowland. (SAT) (Entered: 04/15/2008)

04/11/2008 32 MOTION/Application for Permission to Appeal In Forma Pauperis re 31 Notice of Appeal by Arlene D Rowland. (SAT) (Entered: 04/15/2008)

04/11/2008 33 Notice That There Were No Transcripts to be Ordered for Appeal by Arlene D Rowland re 31 Notice of Appeal (SAT) (Entered:

04/15/2008)

04/15/2008 34 **CERTIFICATE OF RECORD TRANSMITTED TO 9TH CIRCUIT COURT OF APPEALS** re 31 Notice of Appeal (SAT) (Entered: 04/15/2008)

04/15/2008 35 Notice of Appeal Notification Form; Notice of Appeal and copy of docket sheet transmitted to Ninth Circuit and all parties re 31 Notice of Appeal (SAT) (Entered: 04/15/2008)

04/21/2008 36 Notice of Motion/MOTION for Extension of Time to Extend the Time to Respond to Defendant's Motions (1) to Void or Vacate March 25, 2008 Confirmation Order; and (2) to Vacate Confirmation Order by Prudential Equity Group, Inc. (First Request) (Expedited Consideration Requested) (Broyles, Deborah) Modified on 4/21/2008 (SAT). INCORRECT EVENT TYPE SELECTED. THIS ENTRY HAS BEEN MODIFIED FROM "NOTICE" TO "MOTION FOR EXTENSION OF TIME". (Entered: 04/21/2008)

04/21/2008 37 Additional Attachments to Main Document re 36 Other Notice, Order Granting Plaintiff Prudential Equity Group, LLC.'s Motion to Extend the Time to Respond to Defendant's Motions (1) to Void or Vacate March 25, 2008 Confirmation Order; and (2) to Vacate Confirmation Order by Plaintiff Prudential Equity Group, Inc.. (Broyles, Deborah) (Entered: 04/21/2008)

04/21/2008 38 CERTIFICATE OF SERVICE by Prudential Equity Group, Inc. re 36 MOTION for

Extension of Time Amended Certificate of Service (Broyles, Deborah) (Entered: 04/21/2008)

04/25/2008 39 **ORDER** granting pla's 36 Motion to Extend, such that it has up to and including 6/24/08 to respond to Dft's motions. FURTHER ORDERED that all future filings reflect pla's correct name, Prudential Equity Group, LLC, and that all existing filed documents in this action naming Prudential Equity Group, Inc. be construed as Prudential Equity Group, LLC. Signed by Judge Earl H Carroll on 4/24/2008.(LAD) (Entered: 04/25/2008)

04/29/2008 40 Ninth Circuit Case Number 08-15972 for 31 Notice of Appeal. (DNH) (Entered: 04/29/2008)

05/01/2008 41 MOTION for Reconsideration by Arlene D Rowland. (Attachments: # 1 Exhibits)(SAT) (Entered: 05/01/2008)

05/01/2008 42 RESPONSE /Opposition to Court Order re 39 Order on Motion for Extension of Time, by Defendant Arlene D Rowland. (same pdf as doc #41) (Attachments: # 1 Exhibits)(SAT) (Entered: 05/01/2008)

05/02/2008 43 MOTION for Admission Pro Hac Vice as to attorney Ellen M Papadakis on behalf of Prudential Equity Group, LLC. (BAS,) (Entered: 05/05/2008)

05/05/2008 **PRO HAC VICE FEE PAID.** $ 100, receipt number PHX070770 as to Ellen M Papadakis. (BAS,) (Entered: 05/05/2008)

05/05/2008 44 **ORDER** pursuant to General Order 05-25 granting 43 Motion for Admission Pro Hac Vice.Per the Court's Administrative Policies and Procedures Manual, applicant has five (5) days in which to register as a user of the Electronic Filing System. Registration to be accomplished via the court's website at www.azd.uscourts.gov. (BAS,)(This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) (Entered: 05/05/2008)

05/16/2008 45 **ORDER** - IT IS ORDERED that Defendant's 41 Motion for Reconsideration is denied. FURTHER ORDERED that Defendant's 32 Motion/Application for Permission to Appeal In Forma Pauperis is denied without prejudice, with leave to file a financial affidavit re 31 Notice of Appeal. Signed by Judge Earl H Carroll on 5/16/08.(SAT) (Entered: 05/16/2008)

06/04/2008 46 USCA Appeal Fees received $ 455 receipt number PHX072018 re 31 Notice of Appeal filed by Arlene D Rowland (SAT) (Entered: 06/06/2008)

06/24/2008 47 RESPONSE in Opposition re 30 MOTION to Vacate, 29 MOTION to Vacate re Confirmation Order filed by Prudential Equity Group, LLC. (Papadakis, Ellen) (Entered: 06/24/2008)

06/24/2008 48 AFFIDAVIT in Opposition re 30 MOTION to Vacate, 29 MOTION to Vacate re Confirmation Order filed by Prudential Equity Group, LLC. (Attachments: # 1 Exhibit Exhibits 1 to 4 to Declaration of Ellen M. Papadakis In Support of Plaintiff's Opposition to Defendant's Motions, # 2 Exhibit Exhibits 5 to 15 to Declaration of Ellen M.

Papadakis in Support of Plaintiff's Opposition to Defendant's Motions, # 3 Exhibit Exhibits 16 to 18 to Declaration of Ellen M. Papadakis in Support of Plaintiff's Opposition to Defendant's Motions, # 4 Exhibit Exhibits 19 to 22 to Declaration of Ellen M. Papadakis in Support of Plaintiff's Opposition to Defendant's Motions)(Papadakis, Ellen) (Entered: 06/24/2008)

06/24/2008 49 RESPONSE in Opposition re 30 MOTION to Vacate, 29 MOTION to Vacate re Confirmation Order Request for Judicial Notice filed by Prudential Equity Group, LLC. (Attachments: # 1 Exhibit Exhibits 1 to 4 to Plaintiff's Request for Judicial Notice in Support of Its Opposition to Defendant's Motions, # 2 Exhibit Exhibits 5-15 to Plaintiff's Request for Judicial Notice in Support of Its Opposition to Defendant's Motions, # 3 Exhibit Exhibits 16 to 18 to Plaintiff's Request for Judicial Notice in Support of Its Opposition to Defendant's Motions, # 4 Exhibit Exhibits 19 to 22 to Plaintiff's Request for Judicial Notice in Support of Its Opposition to Defendant's Motions)(Papadakis, Ellen) (Entered: 06/24/2008)

06/24/2008 50 RESPONSE in Opposition re 30 MOTION to Vacate, 29 MOTION to Vacate re Confirmation Order Certificate of Service by Mail filed by Prudential Equity Group, LLC. (Papadakis, Ellen) (Entered: 06/24/2008)

06/24/2008 51 RESPONSE in Opposition re 30 MOTION to Vacate, 29 MOTION to Vacate re Confirmation Order Notice of Errata to Declaration of Ellen M. Papadakis in Support of Plaintiff Prudential Equity Group, LLC's Opposition to Defendant's Motions

filed by Prudential Equity Group, LLC. (Papadakis, Ellen) (Entered: 06/24/2008)

06/30/2008 52 **ORDER** of 9th Circuit, within 21 days after the date of this order, appellant shall move to withdraw the motion to proceed in forma pauperis or show cause why the motion to proceed in forma pauperis should not be denied as unnecessary. Remaining briefing schedule reset. Appeal case number 08-15972, as to 31 Notice of Appeal filed by Arlene D Rowland (KMG) (Entered: 06/30/2008)

07/08/2008 53 MOTION for an Extension of Time to Reply to Motion to Void or Vacate March 25, 2008 Confirmation Order and MOTION for an Extension of Time to file Responsive Opposition to Prudential's Post-Judgment Motion for Sanctions by Arlene D Rowland. (SAT) (Entered: 07/08/2008)

07/21/2008 54 RESPONSE to Motion re 53 MOTION for Extension of Time to Reply to Motion to Void or Vacate March 25, 2008 Confirmation Order Plaintiff Prudential Equity Group, LLC's Non-Opposition to Defendant's Motion for Extension of Time filed by Prudential Equity Group, LLC. (Papadakis, Ellen) (Entered: 07/21/2008)

07/21/2008 55 REPLY Memorandum to Prudential's Opposition re 30 MOTION to Vacate, 29 MOTION to Vacate re Confirmation Order; Notice of Pending Motion for Extension of Time to Reply; Notice of: "Declaration in Support of Reply to Prudential's Opposition to Motions to (1) Void or Vacate March 25, 2008 Confirmation Order; and (2) Vacate Confirmation Order" filed by Arlene D Rowland. (SAT) (Entered:

07/21/2008)

07/24/2008 56 **ORDER** - IT IS ORDERED that Defendant's 53 Motion for Extension of Time is granted. Rowland has up to, and including, 9/3/08, in which to file her response. Signed by Judge Earl H Carroll on 7/24/08.(SAT) (Entered: 07/24/2008)

08/01/2008 57 **ORDER** of 9th Circuit, the motion to withdraw the motion to proceed in forma pauperis is granted; the alternative request for a refund of the filing and docketing fees is denied; the briefing schedule established previously shall remain in effect, re: 08-15972 31 Notice of Appeal (REW,) (Entered: 08/01/2008)

08/05/2008 58 MOTION for Entry of Judgment by Plaintiff Prudential Equity Group, LLC. (Attachments: # 1 Exhibit A to Prudential Equity Group, LLC's Request for Entry of Judgment)(Papadakis, Ellen) Modified on 8/6/2008 (TLJ). INCORRECT EVENT SELECTED. THIS ENTRY HAS BEEN MODIFIED FROM REQUEST TO MOTION. (Entered: 08/05/2008)

08/05/2008 59 CERTIFICATE OF SERVICE by Prudential Equity Group, LLC re 58 Request for Entry of Judgment (Papadakis, Ellen) (Entered: 08/05/2008)

08/14/2008 60 RESPONSE in Opposition re 58 MOTION for Judgment filed by Arlene D Rowland. (ESL) (Entered: 08/18/2008)

08/25/2008 61 REPLY in Support re 58 MOTION for Judgment filed by Prudential Equity Group, LLC.

(Attachments: # 1 Exhibit A)(Papadakis, Ellen) (Entered: 08/25/2008)

08/25/2008 62 CERTIFICATE OF SERVICE by Prudential Equity Group, LLC re 61 Reply in Support of Motion For Entry of Judgment (Papadakis, Ellen) (Entered: 08/25/2008)

09/03/2008 63 RESPONSE to Prudential Equity Group LLC's re Post 58 Judgment Request for Sanctions Under the All Writs Act by Defendant Arlene D Rowland. (Attachments: #(1) Exhibits, #(2) exh. cont., #(3) exh. cont.)(KMG) (Entered: 09/05/2008)

09/08/2008 64 MOTION for Extension of Time NOTICE OF MOTION AND MOTION TO EXTEND THE TIME TO REPLY TO DEFENDANT'S OPPOSITION TO PLAINTIFF'S CROSS-MOTION FOR PRE-FILING SANCTIONS by Prudential Equity Group, LLC. (Papadakis, Ellen) (Entered: 09/08/2008)

09/10/2008 65 Additional Attachments to Main Document re 64 MOTION for Extension of Time NOTICE OF MOTION AND MOTION TO EXTEND THE TIME TO REPLY TO DEFENDANT'S OPPOSITION TO PLAINTIFF'S CROSS-MOTION FOR PRE-FILING SANCTIONS ORDER GRANTING PLAINTIFF PRUDENTIAL EQUITY GROUP, LLCS MOTION TO EXTEND THE TIME TO REPLY TO- DEFENDANTS OPPOSITION TO PLAINTIFFS CROSS-MOTION FOR PRE-FILING SANCTIONS by Plaintiff Prudential Equity Group, LLC. (Papadakis, Ellen) (Entered: 09/10/2008)

09/15/2008 66 **ORDER** granting Plaintiff's 64

Motion for Extension of Time; Plaintiff is granted an extension until 10/15/08 to respond to Defendant's Opposition. Signed by Judge Earl H Carroll on 9/12/08.(REW,) (Entered: 09/15/2008)

09/23/2008 67 Notice re Law Firm Name Change by Prudential Equity Group, LLC (Papadakis, Ellen) (Entered: 09/23/2008)

10/15/2008 68 REPLY in Support re 30 MOTION to Vacate, 29 MOTION to Vacate re Confirmation Order Plaintiff Prudential Equity Group, LLC's Reply In Support of Its Cross-Motion for Pre-Filing Sanctions filed by Prudential Equity Group, LLC. (Papadakis, Ellen) (Entered: 10/15/2008)

12/03/2008 69 NOTICE of Attorney Substitution by Deborah J Broyles (Broyles, Deborah) (Entered: 12/03/2008)

12/03/2008 70 NOTICE of Attorney Substitution by Deborah J Broyles (Broyles, Deborah) (Entered: 12/03/2008)

12/08/2008 71 **ORDER** denying 29 Motion to Vacate; denying 30 Motion to Vacate; granting 58 Motion for Judgment. The Court will enter a separate judgment consistent with the Court's 03/25/08 Order 28 . FURTHER ORDERED denying 47 Plaintiffs request for pre-filing sanctions. Signed by Judge Earl H Carroll on 12/08/08.(DNH) (Entered: 12/08/2008)

12/08/2008 72 **JUDGMENT** in favor of Prudential Equity Group, LLC against Arlene D Rowland: IT IS ORDERED that the NASD Award is confirmed and

Defendant's Motion for Dismissal is denied, for the reasons set forth in the Court's 03/25/08 Order. FURTHER ORDERED that Judgment is entered in favor of Prudential Equity Group, LLC, in accordance with the NASD Award, in the amount of $137,795.82, plus interest at the legal rate from 04/21/06, until the judgment is satisfied in full. Signed by Judge Earl H Carroll on 12/08/08. (DNH) (Entered: 12/08/2008)

12/18/2008 73 **AMENDED NOTICE OF APPEAL** to 9th Circuit re 31 Notice of Appeal(Ninth Circuit Case number: 08-15972) as to 28 Order; re 72 Judgment, 71 Order by Arlene D Rowland. (LSP) Modified on 12/22/2008, DOCKET TEXT MODIFIED TO CORRECT DOCUMENT LINKAGE, (LSP). (Entered: 12/22/2008)

12/22/2008 74 APPEAL PROCESSED to Ninth Circuit re: 73 Amended Notice of Appeal and 31 Notice of Appeal filed by Arlene D Rowland, re Ninth Circuit Case number: 08-15972. Filed dates for: Notice of Appeal *12/18/2008*, *Motion* *4/16/2007***, Appealed Judgment *12/8/08*. Court Reporter *NONE* Fee Status: *N/A*. Hearing Dates of *NONE**********. Appellant Attorney: *NONE* *(ProSe)* *NONE*. Appellee Attorney: *Deborah J Broyles* *(RET)* *dbroyles@reedsmith.com***. Copies sent to all parties and 9th Circuit. (Attachments: # 1 Certificate of Record) (LSP) (Entered: 12/22/2008)

02/03/2010 75 **ORDER** of 9th Circuit, granting appellant's motion for extension of time. The petition for panel rehearing and petition for rehearing en banc are due on February 24,2010; appeal case number 08-15972, as to 73 Notice of Appeal - Amended, filed by Arlene D

Rowland, 31 Notice of Appeal filed by Arlene D Rowland (DMT) (Entered: 02/03/2010)

02/22/2010 76 MOTION to Stay re Enforcement of Judgment pending Ninth Circuit Court of Appeals Rehearing, and En Banc Rehearing, and Review by United States Supreme Court on Certiorari by Arlene D Rowland. (DTN) (Entered: 02/23/2010)

02/24/2010 77 Notice re Motion to Stay or Recall Mandate Pending Before Ninth Circuit Court of Appeals by Arlene D Rowland. (TLJ) (Entered: 02/25/2010)

04/05/2010 78 **ORDER** that Pla shall file a Response to Dft Arlene Rowland's 76 Motion (application) to Stay re Enforcement of Judgment within 14 days of the date of this Order. Signed by Judge Earl H Carroll on 04/05/10. (ESL) (Entered: 04/05/2010)

04/12/2010 79 **MANDATE** of 9th Circuit (Certified Copy) - The judgment of this Court, entered 1/11/2010, takes effect this date. This constitutes the formal mandate of this Court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure. The decision of the district court is AFFIRMED re case number 08-15972, as to 73 Notice of Appeal - Amended, filed by Arlene D Rowland, 31 Notice of Appeal filed by Arlene D Rowland. (Attachments: # 1 Memorandum, # 2 nda)(SAT) (Entered: 04/12/2010)

04/19/2010 80 RESPONSE in Opposition re 76 MOTION to Stay re Enforcement of Judgment filed by Prudential Equity Group, LLC. (Broyles, Deborah) (Entered: 04/19/2010)

04/20/2010 81 AMENDED DOCUMENT re 80 RESPONSE in Opposition re 76 MOTION to Stay re Enforcement of Judgment AMENDED OPPOSITION TO APPLICATION TO STAY ENFORCEMENT OF JUDGMENT filed by Prudential Equity Group, LLC. (Broyles, Deborah) Modified on 4/21/2010, INCORRECT EVENT TYPE SELECTED. THIS ENTRY HAS BEEN MODIFIED FROM "Response" TO "Amended Document". DOCKET TEXT MODIFIED TO CORRECT DOCUMENT LINKAGE, (LSP). (Entered: 04/20/2010)

04/27/2010 82 REPLY Memorandum to Response to Motion re 76 MOTION to Stay re Enforcement of Judgment filed by Arlene D Rowland. (DMT) (Entered: 04/28/2010)

05/21/2010 83 **ORDER** that Defendant's "Application 76 to Stay Enforcement of Judgment Pending Ninth Circuit Court of Appeals Rehearing, and En Banc Rehearing, and Review by United States Supreme Court on Certiorari" is denied. Signed by Judge Earl H Carroll on 5/19/10.(KMG) (Entered: 05/21/2010)

Bottom of Form

Court of Appeals Docket #: 08-15972 As of June 27, 2010

Docketed: 04/24/2008 Termed: 01/11/2010
Nature of Suit: 4190 Other Contract Actions
Prudential Equity Group, INC. v. Arlene Rowland

Appeal From: U.S. District Court for Arizona, Phoenix

Fee Status: Paid Case Type Information:
1) civil 2) private 3) null

Originating Court Information:

District:	0970-2 : 2:07-CV-00801-EHC
Trial Judge:	Earl H. Carroll, District Judge
Date Filed:	04/16/2007
Date Order/Judgment:	03/25/2008
Date Order/Judgment EOD:	03/25/2008
Date NOA Filed:	04/11/2008
Date Rec'd COA:	04/21/2008

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Arlene D. Rowland
[NTC Pro Se]
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PRUDENTIAL EQUITY GROUP, INC.,
Plaintiff - Appellee

v.

ARLENE D. ROWLAND,
Defendant - Appellant

04/24/2008 1 DOCKETED CAUSE AND ENTERED APPEARANCES OF APPELLANT IN PRO PER AND COUNSEL FOR APPELLEE. SEND CADS: No. The schedule is set as follows: Appellant Arlene D. Rowland opening brief due 06/03/2008. Appellee Prudential Equity Group, INC. answering brief due 07/03/2008. Appellant's optional reply brief is due 14 days after service of the answering brief. (RT)

04/24/2008 2 **Filed certificate of record on appeal**. RT filed in DC None (RT)

04/24/2008 3 Filed Appellant Arlene D. Rowland motion to proceed In Forma Pauperis. Served on 04/08/2008. (RT)

05/22/2008 4 Received (ifp pending) Appellant Arlene D. Rowland motion to extend time to file - appellant opening brief until 08/04/2008; served on 05/21/2008 (RC)

05/30/2008 5 Received Appellee Prudential Equity Group, INC. response non-opposition to Appellant Motion to extend time to file appellant brief.

Served on 5/30/08(RC)

06/10/2008 6 Received notification from District Court re: payment of docket fee. Amount Paid: USD $455 Date paid: 06/05/2008. (RC)

06/26/2008 7 Filed order MOATT: (ST) to show cause.; Granting Appellant Motion to extend time to file appellant brief filed by Appellant Arlene D. Rowland Appellant Arlene D. Rowland opening brief due 08/08/2008. Appellee Prudential Equity Group, INC. answering brief due 09/08/2008 Appellant's optional reply brief is due 14 days after service of the answering brief.. (KAB)

07/15/2008 8 Filed Appellant Arlene D. Rowland motion to withdraw mtn to proceed ifp. Served on 07/14/2008. (CW)

07/23/2008 9 Filed order (Appellate Commissioner) The motion to withdraw the motion to proceed in forma pauperis is granted. The alternative request for a refund of the filing and docketing fees is denied. The briefing schedule established previously shall remain in effect. (MOATT) (SC)
08/04/2008 10 Filed Appellee Prudential Equity Group, INC. motion to stay appeal; Served on 08/04/2008. (AF)

08/11/2008 11 Filed Appellant Arlene D. Rowland response opposing Appellee Motion to stay appeal . Served on 08/11/2008. (MT)

08/13/2008 13 Filed original and 7 copies of Appellant Arlene D. Rowland (Informal: Yes) opening

brief of 47 pages and 5 excerpts of record in 1 volume. Served on 08/08/2008.–[Edited 08/15/2008 by BY] (PK)

08/13/2008 14 Filed Appellee's Prudential Equity Group, INC. Corporate Disclosure Statement. Served on 08/13/2008. (EL)

08/15/2008 12 Filed clerk order (Deputy Clerk:GSS): The appellee's opposed motion to stay appellate proceedings is granted in part. Proceedings are stayed until October 14, 2008. At or prior to the expiration of the stay, the appellant shall file the opening brief or a request for appropriate relief. If the opening brief is filed, the answering brief is due November 13, 2008. The optional reply brief is due 14 days after service of the answering brief. In the absence of a motion, the stay will terminate without further notice. (SC)

09/25/2008 15 Received notice of law firm name change dated 09/23/2008 from Deborah J. Broyles, Esq., Ellen M. Papadakis, Esq., and Linda S. Husar, Esq. Current new law firm name: THELEN LLP [firm's addresses, telephone and fax numbers remain the same]. (RY)

11/07/2008 16 Filed appellee Prudential Equity Group, LLC motion for extension of time to file answering brief or, alternatively, for a further stay of proceedings. Served on 11/07/2008. (RL)

11/19/2008 17 Filed Appellant Arlene D. Rowland response opposing Appellee Motion to extend time to file answering brief or alternatively, for a further stay of proceedings. Served on 11/15/2008. (NEW)

12/01/2008 18 Filed Appellee Prudential Equity Group, INC. reply to appellant's responsive opposition to motion for extension of time to file answering brief or, alternatively, for a further stay of proceedings. Served on 12/01/2008 (RL)

12/01/2008 19 Received notice of change of address dated 11/24/2008 from Deborah J. Broyles, Esq. Current new address: Reed Smith LLP, Two Embarcadero Center, Suite 2000, San Francisco, CA 94111. (RY)

12/01/2008 20 Received notice of change of address dated 11/26/2008 from Linda S. Husar, Esq. Current new address: Reed Smith LLP, 355 Grand Avenue, Suite 2900, Los Angeles, CA 90071. (RY)

12/05/2008 21 Received Appellee Prudential Equity Group, INC. errata to notice of substitution of counsel. Served on 12/05/2008 (RL)

12/12/2008 22 Filed order (Appellate Commissioner) The appellee's opposed motion to stay pending the district court's decision of the defendant-appellee's motion to vacate and the motion to void or vacate is denied. The district court docket reflects that the district court ruled on the defendant-appellant's motion to vacate and the motion to void or vacate on December 8, 2008. The appellee's opposed motion for an extension of time to file the answering brief is granted. The answering brief is due 02/11/2009. The optional reply brief is due 14 days after service of the answering brief. The appellant's request to bar appellee's counsel from oral argument and subject appellee's counsel to

sanctions under Federal Rule of Appellate Procedure 31(c) is denied. (Pro Mo) (MS)

12/12/2008 23 Received copy of District Court order filed on 12/08/2008 denying defendant's motion to vacate the confirmation order; denying defendant's motion to void or vacate the confirmation order; granting plaintiff's request for entry of judgment; denying plaintiff's request for pre-filing sanctions. (RL)

12/18/2008 24 Filed Appellant Arlene D. Rowland amended notice of appeal FRAP Rule 4(a)(4)(B)(ii) request to amend appellant's informal pro se form brief (allowing 20 more pages), up and until January 16, 2009 to oppose District Court order and judgment issued while case on appeal; both dated December 8, 2008. Served on 12/16/2008. (RL)

12/29/2008 25 Filed certificate of record on appeal. RT filed in DC (NT). (RL)

12/29/2008 26 Received copy of amended notice of appeal from district court. (RL)

02/11/2009 27 Submitted (ECF) Answering brief for review. Submitted by Appellee Prudential Equity Group, INC. in 08-15972, Appellee Prudential Financial in 07-16358. Date of service: 02/11/2009. [6805903] [08-15972, 07-16358, 07-56854] (DJB)

02/12/2009 28 Electronically-filed document [27] Brief Submitted for Review (ECF Filing) is stricken because there is an error in the document. Brief is scanned, brief submitted in cases 07-16358 & 07-56854

erroneously. [07-16358, 07-56854, 08-15972] (LA)

02/12/2009 29 Submitted (ECF) Answering brief for review. Submitted by Appellee Prudential Equity Group, INC. in 08-15972, Appellee Prudential Financial in 07-16358. Date of service: 02/11/2009. [6807018] [08-15972, 07-16358] (DJB)

02/12/2009 30 Filed Appellee Prudential Equity Group, INC. supplemental excerpts of record on appeal in 2 volumes. (LA)

02/17/2009 Filed Answering Brief [29] filed by Prudential Equity Group, INC. in 08-15972. Within 5 working days of the filing of this order, filer is ordered to file 10 copies of the brief in paper format, with a Red cover, accompanied by certification that the brief is identical to the version submitted electronically. (LA)

02/18/2009 31 Received 10 paper copies of Answering brief [29] filed by Prudential Equity Group, INC. in 08-15972. One copy to Case Files, the remainder to Records. (SC)

10/27/2009 32 Filed (ECF) Appellee Prudential Equity Group, INC. Correspondence: Notice of Change of Address. Date of service: 10/27/2009 [7109483] (DJB)

01/11/2010 33 **FILED MEMORANDUM** (ALFRED T. GOODWIN, J. CLIFFORD WALLACE and RICHARD R. CLIFTON) AFFIRMED. FILED AND ENTERED JUDGMENT. [7188774] (DT)

01/26/2010 34 Filed Appellant Arlene D. Rowland's motion to extend time to file petition for rehearing until

02/24/2010. Served on 01/22/2010. [7209163] (GV)

02/01/2010 35 Filed **order** (ALFRED T. GOODWIN, J. CLIFFORD WALLACE and RICHARD R. CLIFTON) Arlene D. Rowland's **motion for extension of time is granted.** The petition for panel rehearing and petition for rehearing en banc are due on February 24, 2010. [7215250] (SJ)

02/01/2010 36 Sent Appellant copies of the memorandum dispositions. [7215742] (SJ)

02/10/2010 37 · Filed Appellant Arlene D. Rowland's petition for panel rehearing and petition for rehearing en banc Number of Pages 15. Served on 02/08/2010. Deficiency: None. (RESEARCH) [7227514] (GV)

03/30/2010 38 Filed **order** (ALFRED T. GOODWIN, J. CLIFFORD WALLACE and RICHARD R. CLIFTON) **The panel has voted to deny the petition for panel rehearing.** The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. See Fed. R. App. P. 35. **Arlene D. Rowland's petition for panel rehearing and petition for rehearing en banc are denied.** No further filings shall be accepted in this closed case. [7283057] (SC)

04/12/2010 40 · **MANDATE ISSUED.** (ATG, JCW and RRC) [7297849] (GV)

05/12/2010 41 Received Aplt's motion to recall mandate pending petition for Cert in the S.C. [7335644] (GV)

STATUTORY TEXT

The Federal Arbitration Act, 9 U.S.C. §§ 1 *et seq.* provides, in part, as follows:

§ 1. "Maritime transactions" and "commerce" defined; exceptions to operation of title

Maritime transactions", as herein defined, means charter parties, bills of lading of water carriers, agreements relating to wharfage, supplies furnished vessels or repairs to vessels, collisions, or any other matters in foreign commerce which, if the subject of controversy, would be embraced within admiralty jurisdiction; "commerce", as herein defined, means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation, but nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce.

§ 2. Validity, irrevocability and enforcement of agreements to arbitrate

A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy

arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

§ 3. Stay of proceedings where issue therein referable to arbitration

If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration.

§ 4. Failure to arbitrate under agreement; petition to United States court having jurisdiction for order to compel arbitration; notice and service thereof; hearing and determination

A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court which, save for such agreement, would have jurisdiction under Title 28, in a civil action or in admiralty of the subject matter of a suit arising out of the controversy between the parties, for an order directing that such arbitration proceed in the manner provided for in such agreement. Five days' notice in writing of such application shall be served upon the

party in default. Service thereof shall be made in the manner provided by the Federal Rules of Civil Procedure. The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement. The hearing and proceedings, under such agreement, shall be within the district in which the petition for an order directing such arbitration is filed. If the making of the arbitration agreement or the failure, neglect, or refusal to perform the same be in issue, the court shall proceed summarily to the trial thereof. If no jury trial be demanded by the party alleged to be in default, or if the matter in dispute is within admiralty jurisdiction, the court shall hear and determine such issue. Where such an issue is raised, the party alleged to be in default may, except in cases of admiralty, on or before the return day of the notice of application, demand a jury trial of such issue, and upon such demand the court shall make an order referring the issue or issues to a jury in the manner provided by the Federal Rules of Civil Procedure, or may specially call a jury for that purpose. If the jury find that no agreement in writing for arbitration was made or that there is no default in proceeding thereunder, the proceeding shall be dismissed. If the jury find that an agreement for arbitration was made in writing and that there is a default in proceeding thereunder, the court shall make an order summarily directing the parties to proceed with the arbitration in accordance with the terms thereof.

§ 9. Award of arbitrators; confirmation; jurisdiction; procedure

If the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration, and shall specify the court, then at any time within one year after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title. If no court is specified in the agreement of the parties, then such application may be made to the United States court in and for the district within which such award was made. Notice of the application shall be served upon the adverse party, and thereupon the court shall have jurisdiction of such party as though he had appeared generally in the proceeding. If the adverse party is a resident of the district within which the award was made, such service shall be made upon the adverse party or his attorney as prescribed by law for service of notice of motion in an action in the same court. If the adverse party shall be a nonresident, then the notice of the application shall be served by the marshal of any district within which the adverse party may be found in like manner as other process of the court.

§ 10. Same; vacation; grounds; rehearing

(a) In any of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration--

(1) Where the award was procured by corruption, fraud, or undue means.

(2) Where there was evident partiality or corruption

in the arbitrators, or either of them.

(3) Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced.

(4) Where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

(b) If an award is vacated and the time within which the agreement required the award to be made has not expired the court may, in its discretion, direct a rehearing by the arbitrators.

(c) The United States district court for the district wherein an award was made that was issued pursuant to section 580 of title 5 may make an order vacating the award upon the application of a person, other than a party to the arbitration, who is adversely affected or aggrieved by the award, if the use of arbitration or the award is clearly inconsistent with the factors set forth in section 572 of title.

§ 11. Same; modification or correction; grounds; order

In either of the following cases the United States court in and for the district wherein the award was made may make an order modifying or correcting the award upon the application of any party to the arbitration–

(a) Where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award.

(b) Where the arbitrators have awarded upon a

matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matter submitted.

(c) Where the award is imperfect in matter of form not affecting the merits of the controversy.

The order may modify and correct the award, so as to effect the intent thereof and promote justice between the parties.

§ 12. Notice of motions to vacate or modify; service; stay of proceedings

Notice of a motion to vacate, modify, or correct an award must be served upon the adverse party or his attorney within three months after the award is filed or delivered. If the adverse party is a resident of the district within which the award was made, such service shall be made upon the adverse party or his attorney as prescribed by law for service of notice of motion in an action in the same court. If the adverse party shall be a nonresident then the notice of the application shall be served by the marshal of any district within which the adverse party may be found in like manner as other process of the court. For the purposes of the motion any judge who might make an order to stay the proceedings in an action brought in the same court may make an order, to be served with the notice of motion, staying the proceedings of the adverse party to enforce the award.

§ 13. Papers filed with order on motions; judgment; docketing; force and effect; enforcement

The party moving for an order confirming, modifying, or correcting an award shall, at the time such order is filed with the clerk for the entry of judgment thereon, also

file the following papers with the clerk:

(a) The agreement; the selection or appointment, if any, of an additional arbitrator or umpire; and each written extension of the time, if any, within which to make the award.

(b) The award.

(c) Each notice, affidavit, or other paper used upon an application to confirm, modify, or correct the award, and a copy of each order of the court upon such an application.

The judgment shall be docketed as if it was rendered in an action. The judgment so entered shall have the same force and effect, in all respects, as, and be subject to all the provisions of law relating to, a judgment in an action; and it may be enforced as if it had been rendered in an action in the court in which it is entered.

§ 16. Appeals [1990 Amendments. Pub.L. 101-650 redesignated former section 15 of this title as this section.]

(a) An appeal may be taken from–

(1) an order–

(A) refusing a stay of any action under section 3 of this title,

(B) denying a petition under section 4 of this title to order arbitration to proceed,

(C) denying an application under section 206 of this title to compel arbitration,

(D) confirming or denying confirmation of an award or partial award, or

(E) modifying, correcting, or vacating an award;

(2) an interlocutory order granting, continuing, or modifying an injunction against an arbitration that is subject to this title; or

(3) a final decision with respect to an arbitration that is subject to this title.

(b) Except as otherwise provided in section 1292(b) of title 28, an appeal may not be taken from an interlocutory order-

(1) granting a stay of any action under section 3 of this title;

(2) directing arbitration to proceed under section 4 of this title;

(3) compelling arbitration under section 206 of this title; or

(4) refusing to enjoin an arbitration that is subject to this title.

[**Note:** Section 16, on appeals, was added as part of the 1988 Judicial Improvements and Access to Justice Act, which became law on November 19, 1988. There were two sections enacted in 1988 with the number 15. A 1990 amendment separates the present one, on appeals, and makes it § 16.]

COUNSEL OF RECORD

as of June 27, 2010 - 9th Circuit Docket Report

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